

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

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended **December 31, 2022**
- OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____
Commission File Number: **001-34756**

Tesla, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

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

1 Tesla Road
Austin, Texas
(Address of principal executive offices)

78725
(Zip Code)

(512) 516-8177

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock	TSLA	The Nasdaq Global Select Market

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

None

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

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

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

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

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

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

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

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

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

The aggregate market value of voting stock held by non-affiliates of the registrant, as of June 30, 2022, the last day of the registrant's most recently completed second fiscal quarter, was \$580.48 billion (based on the closing price for shares of the registrant's Common Stock as reported by the NASDAQ Global Select Market on June 30, 2022). Shares of Common Stock held by each executive officer, director, and holder of 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of January 25, 2023, there were 3,164,102,701 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for the 2023 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2022.

TESLA, INC.

ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2022

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Forward-Looking Statements

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

PART I

ITEM 1. BUSINESS

Overview

We design, develop, manufacture, sell and lease high-performance fully electric vehicles and energy generation and storage systems, and offer services related to our products. We generally sell our products directly to customers, and continue to grow our customer-facing infrastructure through a global network of vehicle service centers, Mobile Service, body shops, Supercharger stations and Destination Chargers to accelerate the widespread adoption of our products. We emphasize performance, attractive styling and the safety of our users and workforce in the design and manufacture of our products and are continuing to develop full self-driving technology for improved safety. We also strive to lower the cost of ownership for our customers through continuous efforts to reduce manufacturing costs and by offering financial and other services tailored to our products.

Our mission is to accelerate the world's transition to sustainable energy. We believe that this mission, along with our engineering expertise, vertically integrated business model and focus on user experience differentiate us from other companies.

Segment Information

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

The automotive segment includes the design, development, manufacturing, sales and leasing of high-performance fully electric vehicles as well as sales of automotive regulatory credits. Additionally, the automotive segment also includes services and other, which includes non-warranty after-sales vehicle services and parts, sales of used vehicles, retail merchandise, paid Supercharging and vehicle insurance revenue. The energy generation and storage segment includes the design, manufacture, installation, sales and leasing of solar energy generation and energy storage products and related services and sales of solar energy systems incentives.

Our Products and Services

Automotive

We currently manufacture four different consumer vehicles – the Model 3, Y, S and X. Model 3 is a four-door mid-size sedan that we designed for manufacturability with a base price for mass-market appeal. Model Y is a compact sport utility vehicle (“SUV”) built on the Model 3 platform with seating for up to seven adults. Model S is a four-door full-size sedan and Model X is a mid-size SUV with seating for up to seven adults. Model S and Model X feature the highest performance characteristics and longest ranges that we offer in a sedan and SUV, respectively.

In December 2022, we began early production and deliveries of the Tesla Semi, our first commercial electric vehicle. We have also announced several planned electric vehicles to address additional vehicle markets, including specialized consumer electric vehicles in Cybertruck and the new Tesla Roadster. We plan to continue leveraging developments in our proprietary Full Self-Driving (“FSD”), battery cell and other technologies.

Energy Generation and Storage

Energy Storage Products

Powerwall and Megapack are our lithium-ion battery energy storage products. Powerwall is designed to store energy at a home or small commercial facility. Megapack is an energy storage solution for commercial, industrial, utility and energy generation customers, multiple of which may be grouped together to form larger installations of gigawatt hours (“GWh”) or greater capacity.

We also continue to develop software capabilities for remotely controlling and dispatching our energy storage systems across a wide range of markets and applications, including through our real-time energy control and optimization platforms.

Solar Energy Offerings

We sell retrofit solar energy systems to customers and channel partners and also make them available through power purchase agreement (“PPA”) arrangements. We purchase most of the components for our retrofit solar energy systems from multiple sources to ensure competitive pricing and adequate supply. We also design and manufacture certain components for our solar energy products.

We sell our Solar Roof, which combines premium glass roof tiles with energy generation, directly to customers, as well as through channel customers. We continue to improve our installation capability and efficiency, including through collaboration with real estate developers and builders on new homes.

Technology

Automotive

Battery and Powertrain

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

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

Vehicle Control and Infotainment Software

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

Self-Driving Development and Artificial Intelligence

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

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

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

We are also applying our artificial intelligence learnings from self-driving technology to the field of robotics. For example, in 2022 we previewed Optimus, a robotic humanoid which is controlled by the same AI system.

Energy Generation and Storage

Energy Storage Products

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

Solar Energy Systems

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

Design and Engineering

Automotive

We have established significant in-house capabilities in the design and test engineering of electric vehicles and their components and systems. Our team has significant experience in computer-aided design as well as durability, strength and crash test simulations, which reduces the product development time of new models. We have also achieved complex engineering feats in stamping, casting and thermal systems, and developed a method to integrate batteries directly with vehicle body structures without separate battery packs to optimize manufacturability, weight, range and cost characteristics.

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

Energy Generation and Storage

Our expertise in electrical, mechanical, civil and software engineering allows us to design, engineer, manufacture and install energy generating and storage products and components, including at the residential through utility scale. For example, the modular design of our Megapack utility-scale battery line is intended to significantly reduce the amount of assembly required in the field. We also customize solutions including our energy storage products, solar energy systems and/or Solar Roof for customers to meet their specific needs.

Sales and Marketing

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

Automotive

Direct Sales

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

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

Used Vehicle Sales

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

Public Charging

We have a growing global network of Tesla Superchargers, which are our industrial-grade, high-speed vehicle chargers. Where possible, we co-locate Superchargers with our solar and energy storage systems to reduce costs and promote renewable power. Supercharger stations are typically placed along well-traveled routes and in and around dense city centers to allow vehicle owners the ability to enjoy quick, reliable charging along an extensive network with convenient stops. Use of the Supercharger network either requires payment of a fee or is free under certain sales programs. In November 2021, we began to offer Supercharger access to non-Tesla vehicles in certain locations in support of our mission to accelerate the world's transition to sustainable energy.

We also work with a wide variety of hospitality, retail and public destinations, as well as businesses with commuting employees, to offer additional charging options for our customers, as well as single-family homeowners and multi-family residential entities, to deploy home charging solutions.

In-App Upgrades

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

Energy Generation and Storage

We market and sell our solar and energy storage products to residential, commercial and industrial customers and utilities through a variety of channels, including through our website, stores and galleries, as well as through our network of channel partners, and in the case of some commercial customers, through PPA transactions. We emphasize simplicity, standardization and accessibility to make it easy and cost-effective for customers to adopt clean energy, while reducing our customer acquisition costs.

Service and Warranty

Automotive

Service

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

Vehicle Limited Warranties and Extended Service Plans

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

Energy Generation and Storage

We provide service and repairs to our energy product customers, including under warranty where applicable. We generally provide manufacturer's limited warranties with our energy storage products and offer certain extended limited warranties that are available at the time of purchase of the system. If we install a system, we also provide certain limited warranties on our installation workmanship.

For retrofit solar energy systems, we provide separate limited warranties for workmanship and against roof leaks, and for Solar Roof, we also provide limited warranties for defects and weatherization. For components not manufactured by us, we generally pass-through the applicable manufacturers' warranties.

As part of our solar energy system and energy storage contracts, we may provide the customer with performance guarantees that commit that the underlying system will meet or exceed the minimum energy generation or performance requirements specified in the contract.

Financial Services

Automotive

Purchase Financing and Leases

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

Insurance

In 2021, we launched our insurance product using real-time driving behavior in select states, which offers rates that are often better than other alternatives and promotes safer driving. Our insurance products are currently available in 12 states and we plan to expand the markets in which we offer insurance products, as part of our ongoing effort to decrease the total cost of ownership for our customers.

Energy Generation and Storage

We offer certain financing options to our solar customers, which enable the customer to purchase and own a solar energy system, Solar Roof or integrated solar and Powerwall system. Our solar PPAs, offered primarily to commercial customers, charge a fee per kilowatt-hour based on the amount of electricity produced by our solar energy systems.

Manufacturing

We currently have manufacturing facilities in the US in Northern California, in Buffalo, New York, Gigafactory New York; in Austin, Texas, Gigafactory Texas and near Reno, Nevada, Gigafactory Nevada. At these facilities, we manufacture and assemble, among other things, vehicles, certain vehicle parts and components, such as our battery packs and battery cells, energy storage components and solar products and components.

Internationally, we also have manufacturing facilities in China (Gigafactory Shanghai) and Germany (Gigafactory Berlin-Brandenburg), which allows us to increase the affordability of our vehicles for customers in local markets by reducing transportation and manufacturing costs and eliminating the impact of unfavorable tariffs. Generally, we continue to expand production capacity at our existing facilities. We also intend to further increase cost-competitiveness in our significant markets by strategically adding local manufacturing.

Supply Chain

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

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

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

Governmental Programs, Incentives and Regulations

Globally, the ownership of our products by our customers is impacted by various government credits, incentives, and policies. Our business and products are also subject to numerous governmental regulations that vary among jurisdictions.

The operation of our business is also impacted by various government programs, incentives, and other arrangements. See Note 2, *Summary of Significant Accounting Policies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details.

Programs and Incentives

Inflation Reduction Act

On August 16, 2022, the Inflation Reduction Act of 2022 (“IRA”) was enacted into law and is effective for taxable years beginning after December 31, 2022, and remains subject to future guidance releases. The IRA includes multiple incentives to promote clean energy, electric vehicles, battery and energy storage manufacture or purchase, including through providing tax credits to consumers. For example, qualifying Tesla customers may receive up to \$7,500 in federal tax credits for the purchase of qualified electric vehicles in the U.S through 2032.

Automotive Regulatory Credits

We earn tradable credits in the operation of our business under various regulations related to zero-emission vehicles (“ZEVs”), greenhouse gas, fuel economy and clean fuel. We sell these credits to other regulated entities who can use the credits to comply with emission standards and other regulatory requirements. Sales of these credits are recognized within automotive regulatory credits revenue in our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Energy Storage System Incentives and Policies

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

For example, energy storage systems that are charged using solar energy may be eligible for the solar energy-related U.S. federal tax credits described below. The Federal Energy Regulatory Commission (“FERC”) has also taken steps to enable the participation of energy storage in wholesale energy markets. In addition, California and a number of other states have adopted procurement targets for energy storage, and behind-the-meter energy storage systems qualify for funding under the California Self Generation Incentive Program. Our customers primarily benefit directly under these programs. In certain instances our customers may transfer such credits to us as contract consideration. In such transactions, they are included as a component of energy generation and storage revenues in our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Pursuant to the IRA, under Sections 48, 48E and 25D of the Internal Revenue Code (“IRC”), standalone energy storage technology is eligible for a tax credit between 6% and 50% of qualified expenditures, regardless of the source of energy, which may be claimed by our customers for storage systems they purchase or by us for arrangements where we own the systems. These tax credits are primarily for the benefit of our customers and are currently scheduled to phase-out starting in 2032 or later.

Solar Energy System Incentives and Policies

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

In particular, pursuant to the IRA, Sections 48, 48E and 25D of the IRC provides a tax credit between 6% and 70% of qualified commercial or residential expenditures for solar energy systems, which may be claimed by our customers for systems they purchase, or by us for arrangements where we own the systems for properties that meet statutory requirements. These tax credits are primarily for the direct benefit of our customers and are currently scheduled to phase-out starting in 2023 or later.

Regulations

Vehicle Safety and Testing

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

We are also required to comply with other federal laws administered by NHTSA, including the Corporate Average Fuel Economy standards, Theft Prevention Act requirements, labeling requirements and other information provided to customers in writing, Early Warning Reporting requirements regarding warranty claims, field reports, death and injury reports and foreign recalls, a Standing General Order requiring reports regarding crashes involving vehicles equipped with advanced driver assistance systems, and additional requirements for cooperating with compliance and safety investigations and recall reporting. The U.S. Automobile Information and Disclosure Act also requires manufacturers of motor vehicles to disclose certain information regarding the manufacturer’s suggested retail price, optional equipment and pricing. In addition, federal law requires inclusion of fuel economy ratings, as determined by the U.S. Department of Transportation and the Environmental Protection Agency (the “EPA”), and New Car Assessment Program ratings as determined by NHTSA, if available.

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

Self-Driving Vehicles

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

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

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

Automobile Manufacturer and Dealer Regulation

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

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

Battery Safety and Testing

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

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

Solar Energy—General

We are subject to certain state and federal regulations applicable to solar and battery storage providers and sellers of electricity. To operate our systems, we enter into standard interconnection agreements with applicable utilities. Sales of electricity and non-sale equipment leases by third parties, such as our leases and PPAs, have faced regulatory challenges in some states and jurisdictions.

Solar Energy—Net Metering

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

Competition

Automotive

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

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

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

Energy Generation and Storage

Energy Storage Systems

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

Solar Energy Systems

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

Intellectual Property

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

Environmental, Social and Governance (ESG) and Human Capital Resources

ESG

The very purpose of Tesla's existence is to accelerate the world's transition to sustainable energy. We believe the world cannot reduce carbon emissions without addressing both energy generation and consumption, and we are designing and manufacturing a complete energy and transportation ecosystem to achieve this goal. As we expand, we are building each new factory to be more efficient and sustainably designed than the previous one, including with respect to per-unit waste reduction and resource consumption, including water and energy usage. We are focused on further enhancing sustainability of operations outside of our direct control, including reducing the carbon footprint of our supply chain.

We are committed to sourcing only responsibly produced materials, and our suppliers are required to provide evidence of management systems that ensure social, environmental and sustainability best practices in their own operations, as well as to demonstrate a commitment to responsible sourcing into their supply chains. We have a zero-tolerance policy when it comes to child or forced labor and human trafficking by our suppliers and we look to the Organization for Economic Co-operation and Development Due Diligence Guidelines to inform our process and use feedback from our internal and external stakeholders to find ways to continually improve. We are also driving safety in our own factories by focusing on worker engagement. Our incidents per vehicle continue to drop even as our production volumes increase. We also strive to be an employer of choice by offering compelling, impactful jobs with best in-industry benefits.

We believe that sound corporate governance is critical to helping us achieve our goals, including with respect to ESG. We continue to evolve a governance framework that exercises appropriate oversight of responsibilities at all levels throughout the company and manages its affairs consistent with high principles of business ethics. Our ESG Sustainability Council is made up of leaders from across our company, and regularly presents to our Board of Directors, which oversees our ESG impacts, initiatives and priorities.

Human Capital Resources

Our greatest asset is our people and we continue to attract the best and brightest with our competitive pay and benefits package which starts with ownership. We offer employees the opportunity to receive equity during their employment and share in the success of Tesla. As of December 31, 2022, our full-time count for our and our subsidiaries' employees worldwide was 127,855, a 29,000 year over year increase.

We are committed to providing a workplace where our employees feel respected and appreciated. Human Resource ("HR") Partners for each functional area are introduced in new hire orientation so employees know whom to contact with questions or concerns. HR Partners are visible throughout facilities and are actively involved in driving culture and engagement alongside business leaders.

Our policies are designed to promote fairness and respect for everyone. We hire, evaluate, and promote employees based on their skills and performance. Everyone is expected to be trustworthy, demonstrate excellence in their performance, and collaborate with others. With this in mind, we will not tolerate certain behaviors. These include harassment, retaliation, violence, intimidation, and discrimination of any kind on the basis of race, color, religion, national origin, gender, sexual orientation, gender identity, gender expression, age, disability or veteran status.

To ensure this, anti-harassment training is conducted on day one of new hire orientation for all employees. In addition, we run various leadership development programs throughout the year aimed at enhancing leaders' skills, and in particular, helping them to understand how to appropriately respond to employee concerns.

Through our *See Something, Say Something* program, employees are encouraged to speak up both in regard to misconduct and safety concerns. They can do so by contacting the integrity line, submitting concerns through our Take Charge process, or notifying their HR Partner or any member of management. Concerns are reviewed in accordance with established protocols by investigators with expertise, who also review for trends and outcomes for remediation and appropriate controls.

Responding to questions timely is key so we implemented HR Answer Bars in the factories where employees can easily access and speak with an HR representative immediately regarding career advice, benefits or any concerns the employee may have. We have also implemented an HR Chatbot for 24x7 answers to team members' questions.

To continue innovating and changing the world for the better, we must ensure we have a talented and engaged workforce with ample opportunity to contribute to our mission and grow professionally. We are focused on intentionally creating pathways to career opportunities across Tesla through strategic initiatives such as:

- **Internships and Apprenticeships** - Over 3,000 university and community college students from around the world are hired into internship and apprenticeship opportunities at Tesla annually. We recruit from over 100 collegiate institutions and diverse student organizations, attracting top talent passionate about accelerating the world's transition to sustainable energy.
- **Tesla START** - Tesla START is an intensive training program providing individuals with the skills necessary for a successful technician role at Tesla. We partner with 13 colleges across the country to integrate Tesla START into automotive, collision and manufacturing curriculums to provide individuals with a smooth transition from college to full-time employment. In 2022, we had over 200 graduates from Tesla START programs, with an additional 100+ graduating in the coming weeks from our winter classes.
- **High School Graduate Pathways** - Tesla's Manufacturing Development Program is designed to provide graduating high school seniors with the financial resources, coursework and experience they need to start a successful manufacturing career at Tesla. We hired 144 graduates through this program in 2022, and our goal in 2023 is to grow this program 2.5X to over 360 students annually across our Fremont Factory, Gigafactory Nevada, Gigafactory Texas, and Gigafactory New York.

At Tesla, our employees show up passionate about making a difference in the world and for each other. With a majority-minority workforce, empowering our employee resource groups to take charge in driving initiatives that attract, develop and retain our passionate workforce is vital to our continued success.

Available Information

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

ITEM 1A. RISK FACTORS

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

Risks Related to Our Ability to Grow Our Business

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

Since the first quarter of 2020, there has been a worldwide impact from the COVID-19 pandemic. Government regulations and shifting social behaviors have, at times, limited or closed non-essential transportation, government functions, business activities and person-to-person interactions. Global trade conditions and consumer trends that originated during the pandemic continue to persist and may also have long-lasting adverse impact on us and our industries independently of the progress of the pandemic.

For example, pandemic-related issues have exacerbated port congestion and intermittent supplier shutdowns and delays, resulting in additional expenses to expedite delivery of critical parts. Similarly, increased demand for personal electronics has created a shortfall of semiconductors, which has caused challenges in our supply chain and production. In addition, labor shortages resulting from the pandemic, including worker absenteeism, has led to increased difficulty in hiring and retaining manufacturing and service workers, as well as increased labor costs and supplier delays. Sustaining our production trajectory will require the ongoing readiness and solvency of our suppliers and vendors, a stable and motivated production workforce and government cooperation, including for travel and visa allowances. The contingencies inherent in the ramp at new facilities such as Gigafactory Berlin-Brandenburg and Gigafactory Texas may be exacerbated by these challenges. Additionally, infection rates and regulations continue to fluctuate in various regions, which may impact operations. For example, in 2022, spikes in COVID-19 cases in Shanghai resulted in the temporary shutdown of Gigafactory Shanghai, as well as parts of our supply chain, and impacted our ability to deliver cars.

We cannot predict the duration or direction of current global trends or their sustained impact. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and attempt to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. Lastly, rising interest rates may lead to consumers to increasingly pull back spending, including on our products, which may harm our demand, business and operating results. If we experience unfavorable global market conditions, or if we cannot or do not maintain operations at a scope that is commensurate with such conditions or are later required to or choose to suspend such operations again, our business, prospects, financial condition and operating results may be harmed.

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

We have previously experienced and may in the future experience launch and production ramp delays for new products and features. For example, we encountered unanticipated supplier issues that led to delays during the initial ramp of our first Model X and experienced challenges with a supplier and with ramping full automation for certain of our initial Model 3 manufacturing processes. In

addition, we may introduce in the future new or unique manufacturing processes and design features for our products. There is no guarantee that we will be able to successfully and timely introduce and scale such processes or features.

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

We have experienced, and may also experience similar future delays in launching and/or ramping production of our energy storage products and Solar Roof; new product versions or variants; new vehicles; and future features and services based on artificial intelligence. Likewise, we may encounter delays with the design, construction and regulatory or other approvals necessary to build and bring online future manufacturing facilities and products.

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

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

Our products contain thousands of parts purchased globally from hundreds of suppliers, including single-source direct suppliers, which exposes us to multiple potential sources of component shortages. Unexpected changes in business conditions, materials pricing, including inflation of raw material costs, labor issues, wars, trade policies, natural disasters, health epidemics such as the global COVID-19 pandemic, trade and shipping disruptions, port congestions and other factors beyond our or our suppliers' control could also affect these suppliers' ability to deliver components to us or to remain solvent and operational. For example, a global shortage of semiconductors has been reported since early 2021 and has caused challenges in the manufacturing industry and impacted our supply chain and production. In addition, a spike in COVID-19 cases in Shanghai in early 2022 led to temporary manufacturing shutdowns of certain of our suppliers. We have used alternative parts and programmed software to mitigate certain challenges caused by these shortages, but there is no guarantee we may be able to continually do so as we scale production to meet our growth targets. Additionally, if our suppliers do not accurately forecast and effectively allocate production or if they are not willing to allocate sufficient production to us, it may reduce our access to components and require us to search for new suppliers. The unavailability of any component or supplier could result in production delays, idle manufacturing facilities, product design changes and loss of access to important technology and tools for producing and supporting our products, as well as impact our capacity expansion and our ability to fulfill our obligations under customer contracts. Moreover, significant increases in our production, such as for Model 3 and Model Y, or product design changes by us have required and may in the future require us to procure additional components in a short amount of time. We have faced in the past, and may face suppliers who are unwilling or unable to sustainably meet our timelines or our cost, quality and volume needs, or to do so may cost us more, which may require us to replace them with other sources. Finally, we have limited vehicle manufacturing experience outside of the Fremont Factory and Gigafactory Shanghai and we may experience issues increasing the level of localized procurement at Gigafactory Berlin-Brandenburg and Gigafactory Texas. While we believe that we will be able to secure additional or alternate sources or develop our own replacements for most of our components, there is no assurance that we will be able to do so quickly or at all. Additionally, we may be unsuccessful in our continuous efforts to negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms, source less expensive suppliers for certain parts and redesign certain parts to make them less expensive to produce, especially in light of the increases in materials pricing. Any of these occurrences may harm our business, prospects, financial condition and operating results.

As the scale of our vehicle production increases, we will also need to accurately forecast, purchase, warehouse and transport components at high volumes to our manufacturing facilities and servicing locations internationally. If we are unable to accurately match the timing and quantities of component purchases to our actual needs or successfully implement automation, inventory

management and other systems to accommodate the increased complexity in our supply chain and parts management, we may incur unexpected production disruption, storage, transportation and write-off costs, which may harm our business and operating results.

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

Our ability to increase production of our vehicles on a sustained basis, make them affordable globally by accessing local supply chains and workforces and streamline delivery logistics is dependent on the construction and ramp of our current and future factories. The construction of and commencement and ramp of production at these factories are subject to a number of uncertainties inherent in all new manufacturing operations, including ongoing compliance with regulatory requirements, procurement and maintenance of construction, environmental and operational licenses and approvals for additional expansion, 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. Moreover, we will have to establish and ramp production of our proprietary battery cells and packs at our new factories, and we additionally intend to incorporate sequential design and manufacturing changes into vehicles manufactured at each new factory. If we experience any issues or delays in meeting our projected timelines, costs, capital efficiency and production capacity for our new factories, expanding and managing teams to implement iterative design and production changes there, maintaining and complying with the terms of any debt financing that we obtain to fund them or generating and maintaining demand for the vehicles we manufacture there, our business, prospects, operating results and financial condition may be harmed.

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

Our success will depend on our ability to continue to expand our sales capabilities. We are targeting with Model 3 and Model Y a global mass demographic with a broad range of potential customers, in which we have relatively limited experience projecting demand and pricing our products. We currently produce numerous international variants at a limited number of factories, and if our specific demand expectations for these variants prove inaccurate, we may not be able to timely generate deliveries matched to the vehicles that we produce in the same timeframe or that are commensurate with the size of our operations in a given region. Likewise, as we develop and grow our energy products and services worldwide, our success will depend on our ability to correctly forecast demand in various markets.

Because we do not have independent dealer networks, we are responsible for delivering all of our vehicles to our customers. As our production volumes continue to grow, we have faced in the past, and may face challenges with deliveries at increasing volumes, particularly in international markets requiring significant transit times. We have also deployed a number of delivery models, such as deliveries to customers' homes and workplaces and touchless deliveries, but there is no guarantee that such models will be scalable or be accepted globally. Likewise, as we ramp our energy products, we are working to substantially increase our production and installation capabilities. If we experience production delays or inaccurately forecast demand, our business, financial condition and operating results may be harmed.

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

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

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

We are dependent on the continued supply of lithium-ion battery cells for our vehicles and energy storage products, and we will require substantially more cells to grow our business according to our plans. Currently, we rely on suppliers such as Panasonic and Contemporary Amperex Technology Co. Limited (CATL) for these cells. We have to date fully qualified only a very limited number of such suppliers and have limited flexibility in changing suppliers. Any disruption in the supply of battery cells from our suppliers could limit production of our vehicles and energy storage products. In the long term, we intend to supplement cells from our suppliers with cells manufactured by us, which we believe will be more efficient, manufacturable at greater volumes and more cost-effective

than currently available cells. However, our efforts to develop and manufacture such battery cells have required, and may continue to require, significant investments, and there can be no assurance that we will be able to achieve these targets in the timeframes that we have planned or at all. If we are unable to do so, we may have to curtail our planned vehicle and energy storage product production or procure additional cells from suppliers at potentially greater costs, either of which may harm our business and operating results.

In addition, the cost and mass production of battery cells, whether manufactured by our suppliers or by us, depends in part upon the prices and availability of raw materials such as lithium, nickel, cobalt and/or other metals. The prices for these materials fluctuate and their available supply may be unstable, depending on market conditions and global demand for these materials. For example, as a result of increased global production of electric vehicles and energy storage products, suppliers of these raw materials may be unable to meet our volume needs. Additionally, our suppliers may not be willing or able to reliably meet our timelines or our cost and quality needs, which may require us to replace them with other sources. Any reduced availability of these materials may impact our access to cells and our growth, and any increases in their prices may reduce our profitability if we cannot recoup such costs through increased prices. Moreover, our inability to meet demand and any product price increases may harm our brand, growth, prospects and operating results.

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

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

In addition, electric vehicles still constitute a small percentage of overall vehicle sales. As a result, the market for our vehicles could be negatively affected by numerous factors, such as:

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

Finally, the target demographics for our vehicles, particularly Model 3 and Model Y, are highly competitive. Sales of vehicles in the automotive industry tend to be cyclical in many markets, which may expose us to further volatility.

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

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

We also face competition in our energy generation and storage business from other manufacturers, developers, installers and service providers of competing energy technologies, 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 customer defaults.

Risks Related to Our Operations

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

Our plan to grow the volume and profitability of our vehicles and energy storage products depends on significant lithium-ion battery cell production, including by our partner Panasonic at Gigafactory Nevada. We also produce several vehicle components at our Gigafactories, such as battery modules and packs and drive units, and manufacture energy storage products. In the past, some of the manufacturing lines for certain product components took longer than anticipated to ramp to their full capacity, and additional bottlenecks may arise in the future as we continue to increase the production rate and introduce new lines. In addition, as the IRA provides new incentives for domestic energy production and manufacturing, we may face increasing competition from other automobile manufacturers as well as suppliers for the resources and capacity to build additional factories and expand our operations domestically. If we are unable to or otherwise do not maintain and grow our respective operations, or if we are unable to do so cost-effectively or hire and retain highly-skilled personnel there, our ability to manufacture our products profitably would be limited, which may harm our business and operating results.

Finally, the high volumes of lithium-ion cells and battery modules and packs manufactured by us and by our suppliers are stored and recycled at our various facilities. Any mishandling of these products may cause disruption to the operation of such facilities. While we have implemented safety procedures related to the handling of the cells, there can be no assurance that a safety issue or fire related to the cells would not disrupt our operations. Any such disruptions or issues may harm our brand and business.

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

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

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

If our products contain design or manufacturing defects that cause them not to perform as expected or that require repair, or certain features of our vehicles such as new Autopilot or FSD features take longer than expected to become enabled, are legally restricted or become subject to onerous regulation, our ability to develop, market and sell our products and services may be harmed, and we may experience delivery delays, product recalls, product liability, breach of warranty and consumer protection claims and significant warranty and other expenses. There is no guarantee that any incremental changes in the specific equipment we deploy in our vehicles over time will not result in initial functional disparities from prior iterations or will perform as expected in the timeframe we anticipate, or at all.

Our products are also highly dependent on software, which is inherently complex and may contain latent defects or errors or be subject to external attacks. Issues experienced by our customers have included those related to taillights, seat belt chimes and display screens in certain Tesla models. Although we attempt to remedy any issues we observe in our products as effectively and rapidly as possible, such efforts may not be timely, may hamper production or may not completely satisfy our customers. While we have performed, and continue to perform, extensive internal testing on our products and features, we currently have a limited frame of reference by which to evaluate their long-term quality, reliability, durability and performance characteristics. There can be no assurance that we will be able to detect and fix any defects in our products prior to their sale to or installation for customers.

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

The automobile industry generally experiences significant product liability claims, and as such we face the risk of such claims in the event our vehicles do not perform or are claimed to not have performed as expected. As is true for other automakers, our vehicles have been involved and we expect in the future will be involved in accidents resulting in death or personal injury, and such accidents where Autopilot, Enhanced Autopilot or FSD Capability features are engaged are the subject of significant public attention, especially in light of NHTSA's Standing General Order requiring reports regarding crashes involving vehicles with advanced driver assistance systems. We have experienced, and we expect to continue to face, claims and regulatory scrutiny arising from or related to misuse or claimed failures or alleged misrepresentations of such new technologies that we are pioneering. In addition, the battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting

smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed our battery packs to passively contain any single cell's release of energy without spreading to neighboring cells, there can be no assurance that a field or testing failure of our vehicles or other battery packs that we produce will not occur, in particular due to a high-speed crash. Likewise, as our solar energy systems and energy storage products generate and store electricity, they have the potential to fail or cause injury to people or property. Any product liability claim may subject us to lawsuits and substantial monetary damages, product recalls or redesign efforts, and even a meritless claim may require us to defend it, all of which may generate negative publicity and be expensive and time-consuming. In most jurisdictions, we generally self-insure against the risk of product liability claims for vehicle exposure, meaning that any product liability claims will likely have to be paid from company funds and not by insurance.

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

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

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

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

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

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

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

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

We are party to an operating lease and a research and development agreement through the State University of New York (the “SUNY Foundation”). These agreements provide for the construction and use of our Gigafactory New York, which we have primarily used for the development and production of our Solar Roof and other solar products and components, energy storage components and Supercharger components, and for other lessor-approved functions. Under this agreement, we are obligated to, among other things, meet employment targets as well as specified minimum numbers of personnel in the State of New York and in Buffalo, New York and spend or incur \$5.00 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York during a period that was initially 10 years beginning April 30, 2018. As of December 31, 2022, we are currently in excess of such targets relating to investments and personnel in the State of New York and Buffalo. While we expect to have and grow significant operations at Gigafactory New York and the surrounding Buffalo area, any failure by us in any year over the course of the term of the agreement to meet all applicable future obligations may result in our obligation to pay a “program payment” of \$41 million to the SUNY Foundation for such year, the termination of our lease at Gigafactory New York which may require us to pay additional penalties, and/or the need to adjust certain of our operations, in particular our production ramp of the Solar Roof or other components. Any of the foregoing events may harm our business, financial condition and operating results.

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

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

Employees may leave Tesla or choose other employers over Tesla due to various factors, such as a very competitive labor market for talented individuals with automotive or technology experience, or any negative publicity related to us. In regions where we have or will have operations, particularly significant engineering and manufacturing centers, there is strong competition for individuals with skillsets needed for our business, including specialized knowledge of electric vehicles, engineering and electrical and building construction expertise. Moreover, we may be impacted by perceptions relating to reductions in force that we have conducted in the past in order to optimize our organizational structure and reduce costs and the departure of certain senior personnel for various reasons. We also compete with both mature and prosperous companies that have far greater financial resources than we do and start-ups and emerging companies that promise short-term growth opportunities.

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

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

We are highly dependent on the services of Elon Musk, Technoking of Tesla and our Chief Executive Officer. 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, Chief Executive Officer of Twitter, Inc., a social media company, and is involved in other emerging technology ventures.

Our information technology systems or data, or those of our service providers or customers or users could be subject to cyber-attacks or other security incidents, which could result in data breaches, intellectual property theft, claims, litigation, regulatory investigations, significant liability, reputational damage and other adverse consequences.

We continue to expand our information technology systems as our operations grow, such as product data management, procurement, inventory management, production planning and execution, sales, service and logistics, dealer management, financial, tax and regulatory compliance systems. This includes the implementation of new internally developed systems and the deployment of such systems in the U.S. and abroad. While, we maintain information technology measures designed to protect us against intellectual property theft, data breaches, sabotage and other external or internal cyber-attacks or misappropriation, our systems and those of our service providers are potentially vulnerable to malware, ransomware, viruses, denial-of-service attacks, phishing attacks, social engineering, computer hacking, unauthorized access, exploitation of bugs, defects and vulnerabilities, breakdowns, damage, interruptions, system malfunctions, power outages, terrorism, acts of vandalism, security breaches, security incidents, inadvertent or intentional actions by employees or other third parties, and other cyber-attacks.

To the extent any security incident results in unauthorized access or damage to or acquisition, use, corruption, loss, destruction, alteration or dissemination of our data, including intellectual property and personal information, or our products or vehicles, or for it to be believed or reported that any of these occurred, it could disrupt our business, harm our reputation, compel us to comply with applicable data breach notification laws, subject us to time consuming, distracting and expensive litigation, regulatory investigation and oversight, mandatory corrective action, require us to verify the correctness of database contents, or otherwise subject us to liability under laws, regulations and contractual obligations, including those that protect the privacy and security of personal information. This could result in increased costs to us and result in significant legal and financial exposure and/or reputational harm.

We also rely on service providers, and similar incidents relating to their information technology systems could also have a material adverse effect on our business. There have been and may continue to be significant supply chain attacks. Our service providers, including our workforce management software provider, have been subject to ransomware and other security incidents, and we cannot guarantee that our or our service providers' systems have not been breached or that they do not contain exploitable defects, bugs, or vulnerabilities that could result in a security incident, or other disruption to, our or our service providers' systems. Our ability to monitor our service providers' security measures is limited, and, in any event, malicious third parties may be able to circumvent those security measures.

Further, the implementation, maintenance, segregation and improvement of these systems require significant management time, support and cost, and there are inherent risks associated with developing, improving and expanding our core systems as well as implementing new systems and updating current systems, including disruptions to the related areas of business operation. These risks may affect our ability to manage our data and inventory, procure parts or supplies or manufacture, sell, deliver and service products, adequately protect our intellectual property or achieve and maintain compliance with, or realize available benefits under, tax laws and other applicable regulations.

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

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

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

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

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

It is not uncommon for employees of certain trades at companies such as ours 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 (the "NLRB"), 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. In March 2021, the NLRB adopted a portion of the recommendation and overturned others. Tesla appealed the decision to the United States Circuit Court for the Fifth Circuit, which is currently pending. Any unfavorable ultimate outcome for Tesla may have a negative impact on the perception of Tesla's treatment of our employees. Furthermore, we are directly or indirectly dependent upon companies with unionized work forces, such as suppliers and trucking and freight companies. Any work stoppages or strikes organized by such unions could delay the manufacture and sale of our products and may harm our business and operating results.

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

As a manufacturing company, we must manage the risk of product recalls with respect to our products. Recalls for our vehicles have resulted from various hardware and software-related safety defect or non-compliance determinations. In addition to recalls initiated by us for various causes, testing of or investigations into our products by government regulators or industry groups may compel us to initiate product recalls or may result in negative public perceptions about the safety of our products, even if we disagree with the defect determination or have data that contradicts it. In the future, we may voluntarily or involuntarily initiate recalls if any of our products are determined by us or a regulator to contain a safety defect or be noncompliant with applicable laws and regulations, such as U.S. Federal Motor Vehicle Safety Standards. Such recalls, whether voluntary or involuntary or caused by systems or components engineered or manufactured by us or our suppliers, could result in significant expense, supply chain complications and service burdens, and may harm our brand, business, prospects, financial condition and operating results.

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

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

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

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

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

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

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

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

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

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

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

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

As of December 31, 2022, we and our subsidiaries had outstanding \$2.06 billion in aggregate principal amount of indebtedness (see Note 11, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K). Our 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.

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

We are exposed to fluctuations in currency exchange rates.

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

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

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

Increased scrutiny and changing expectations from stakeholders with respect to the Company's ESG practices may result in additional costs or risks.

Companies across many industries are facing increasing scrutiny related to their environmental, social and governance (ESG) practices. Investor advocacy groups, certain institutional investors, investment funds and other influential investors are also increasingly focused on ESG practices and in recent years have placed increasing importance on the non-financial impacts of their investments. While our mission is to accelerate the world's transition to sustainable energy, if our ESG practices do not meet investor or other industry stakeholder expectations, which continue to evolve, we may incur additional costs and our brand, ability to attract and retain qualified employees and business may be harmed.

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

We may be impacted by natural disasters, wars, health epidemics, weather conditions, the long-term effects of climate change, power outages or other events outside of our control. For example, our 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. Moreover, the area in which our Gigafactory Texas is located experienced severe winter storms in the first quarter of 2021 that had a widespread impact on utilities and transportation. If major disasters such as earthquakes, floods or other climate-related events occur, or our information system or communication 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. Also, the broader consequences in the current conflict between Russia and Ukraine, which may include further embargoes, regional instability and geopolitical shifts; airspace bans relating to certain routes, or strategic decisions to alter certain routes; and potential retaliatory action by the Russian government against companies, and the extent of the conflict on our business and operating results cannot be predicted. We may incur expenses or delays relating to such events outside of our control, which could have a material adverse impact on our business, operating results and financial condition.

Risks Related to Government Laws and Regulations

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

Government and economic incentives that support the development and adoption of electric vehicles in the U.S. and abroad, including certain tax exemptions, tax credits and rebates, may be reduced, eliminated or exhausted from time to time. For example, previously available incentives favoring electric vehicles in areas including Ontario, Canada, Netherlands, Italy, Hong Kong and California have expired or were cancelled or temporarily unavailable, and in some cases were not eventually replaced or reinstated, which may have negatively impacted sales. Certain government and economic incentives, similar to the IRA, may also be implemented that provide benefits to manufacturers who assemble domestically, have local suppliers or have other characteristics that may not apply to Tesla. Such developments could negatively impact demand for our vehicles, and we and our customers may have to adjust to them, including through pricing modifications.

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

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

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

As we grow our manufacturing operations in additional regions, we are or will be subject to complex environmental, manufacturing, health and safety laws and regulations at numerous jurisdictional levels in the U.S., China, Germany and other locations abroad, including laws relating to the use, handling, storage, recycling, disposal and/or human exposure to hazardous materials, product material inputs and post-consumer products and with respect to constructing, expanding and maintaining our facilities. New, or changes in, environmental and climate change laws, regulations or rules could also lead to increased costs of compliance, including remediations of any discovered issues, and changes to our operations, which may be significant, and any failures to comply could result in significant expenses, delays or fines. In addition, as we have increased our employee headcount and operations, we are and may continue to be subject to increased scrutiny, including litigation and government investigations relating to allegations such as discrimination and workplace misconduct, that we will need to defend against. If we are unable to successfully defend ourselves in such litigation or government investigations, it may harm our brand, ability to attract and retain qualified employees, business and financial condition. We are also subject to laws and regulations applicable to the supply, manufacture, import, sale, service and performance of our products both domestically and abroad. For example, in countries outside of the U.S., we are required to meet standards relating to vehicle safety, fuel economy and emissions that are often materially different from equivalent requirements in the U.S., thus resulting in additional investment into the vehicles and systems to ensure regulatory compliance in all 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 in certain markets Autopilot and FSD Capability features that today assist drivers with certain tedious and potentially dangerous aspects of road travel, but which currently require drivers to remain fully engaged in the driving operation. We are continuing to develop our Autopilot and FSD Capability technology. There are a variety of international, federal and state regulations that may apply to, and may adversely affect, the design and performance, sale, registration and operation of Autopilot and FSD Capability, and future capability, including full self-driving vehicles that may not be operated by a human driver. This includes many existing vehicle standards that were not originally intended to apply to vehicles that may not be operated by a human driver. Such regulations continue to rapidly change, which increases the likelihood of a patchwork of complex or conflicting regulations, or may delay, restrict or prohibit the availability of certain functionalities and vehicle designs, which could adversely affect our business.

Finally, as a manufacturer, installer and service provider with respect to solar generation and energy storage systems, a supplier of electricity generated and stored by certain of the solar energy and energy storage systems we install for customers, and a provider of

grid services through virtual power plant models, we are impacted by federal, state and local regulations and policies concerning the import or export of components, electricity pricing, the interconnection of electricity generation and storage equipment with the electrical grid and the sale of electricity generated by third party-owned systems. If regulations and policies are introduced that adversely impact the import or export of components, or the interconnection, maintenance or use of our solar and energy storage systems, they could deter potential customers from purchasing our solar and energy storage products and services, threaten the economics of our existing contracts and cause us to cease solar and energy storage system sales and services in the relevant jurisdictions, which may harm our business, financial condition and operating results.

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

Any failure by us or our vendor or other business partners to comply with our public privacy notice or with federal, state or international privacy, data protection or security laws or regulations relating to the processing, collection, use, retention, security and transfer of personally identifiable information could result in regulatory or litigation-related actions against us, legal liability, fines, damages, ongoing audit requirements and other significant costs. Substantial expenses and operational changes may be required in connection with maintaining compliance with such laws, and even an unsuccessful challenge by customers or regulatory authorities of our activities could result in adverse publicity and could require a costly response from and defense by us. In addition, certain emerging privacy laws are still subject to a high degree of uncertainty as to their interpretation, application and impact, and may require extensive system and operational changes, be difficult to implement, increase our operating costs, adversely impact the cost or attractiveness of the products or services we offer, or result in adverse publicity and harm our reputation. For example, the General Data Protection Regulation applies to the processing of personal information collected from individuals located in the European Union, and has created new compliance obligations and significantly increased fines for noncompliance. Similarly, the California Consumer Privacy Act imposes certain legal obligations on our use and processing of personal information related to California residents. Finally, new privacy and cybersecurity laws have come into effect in China. In addition to the risks related to general privacy regulation, we may also be subject to specific vehicle manufacturer obligations relating to cybersecurity, data privacy and data localization requirements which place additional risks to our international operations. Risks and penalties could include ongoing audit requirements, data protection authority investigations, legal proceedings by international governmental entities or others resulting in mandated disclosure of sensitive data or other commercially unfavorable terms. Notwithstanding our efforts to protect the security and integrity of our customers' personal information, we may be required to expend significant resources to comply with data breach requirements if, for example, third parties improperly obtain and use the personal information of our customers or we otherwise experience a data loss with respect to customers' personal information. A major breach of our network security and systems may result in fines, penalties and damages and harm our brand, prospects and operating results.

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

We are cooperating with certain government investigations as discussed in Note 15, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. To our knowledge, no government agency in any such ongoing investigation has concluded that any wrongdoing occurred. However, we cannot predict the outcome or impact of any such ongoing matters, and there exists the possibility that we could be subject to liability, penalties and other restrictive sanctions and adverse consequences if the SEC, the U.S. Department of Justice or any other government agency were to pursue legal action in the future. Moreover, we expect to incur costs in responding to related requests for information and subpoenas, and if instituted, in defending against any governmental proceedings.

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

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

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

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

Risks Related to the Ownership of Our Common Stock

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

The trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. Our common stock has experienced over the last 52 weeks an intra-day trading high of \$384.29 per share and a low of \$101.81 per share, as adjusted to give effect to the three-for-one stock split in the form of a stock dividend in August 2022 (the “2022 Stock Split”). The stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. In particular, a large proportion of our common stock has been historically and may in the future be traded by short sellers which may put pressure on the supply and demand for our common stock, further influencing volatility in its market price. Public perception of our company or management and other factors outside of our control may additionally impact the stock price of companies like us that garner a disproportionate degree of public attention, regardless of actual operating performance. In addition, in the past, following periods of volatility in the overall market or the market price of our shares, securities class action litigation has been filed against us. While we defend such actions vigorously, any judgment against us or any future stockholder litigation could result in substantial costs and a diversion of our management’s attention and resources.

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

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

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

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

If Elon Musk were forced to sell shares of our common stock, either that he has pledged to secure certain personal loan obligations, or in satisfaction of other 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. Further, Mr. Musk from time to time may commit to investing in significant business or other ventures, and as a result, be required to sell shares of our common stock in satisfaction of such commitments.

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

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

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

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

Primary Manufacturing Facilities	Location	Owned or Leased
Gigafactory Texas	Austin, Texas	Owned
Fremont Factory	Fremont, California	Owned
Gigafactory Nevada	Sparks, Nevada	Owned
Gigafactory Berlin-Brandenburg	Grunheide, Germany	Owned
Gigafactory Shanghai	Shanghai, China	*
Gigafactory New York	Buffalo, New York	Leased
Megafactory	Lathrop, California	Leased

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

ITEM 3. LEGAL PROCEEDINGS

For a description of our material pending legal proceedings, please see Note 15, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

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

The German Umweltbundesamt issued our subsidiary in Germany a notice and fine in the amount of 12 million euro alleging its non-compliance under applicable laws relating to market participation notifications and take-back obligations with respect to end-of-life battery products required thereunder. In response to Tesla's objection, the German Umweltbundesamt issued Tesla a revised fine notice dated April 29, 2021 in which it reduced the original fine amount to 1.45 million euro. This is primarily relating to administrative requirements, but Tesla has continued to take back battery packs, and filed a new objection in June 2021. A hearing took place on November 24, 2022, and the parties reached a settlement which resulted in a further reduction of the fine to 600,000 euro. Both parties have waived their right to appeal.

District attorneys in certain California counties are conducting an investigation into Tesla's waste segregation practices pursuant to Cal. Health & Saf. Code section 25100 et seq. and Cal. Civil Code § 1798.80. Tesla has implemented various remedial measures, including conducting training and audits, and enhancements to its site waste management programs. While the outcome of this matter cannot be determined at this time, it is not currently expected to have a material adverse impact on our business.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

Market Information

Our common stock has traded on The NASDAQ Global Select Market under the symbol “TSLA” since it began trading on June 29, 2010. Our initial public offering was priced at approximately \$1.13 per share on June 28, 2010 as adjusted to give effect to the 2022 Stock Split and the five-for-one stock split effected in the form of a stock dividend in August 2020 (the “2020 Stock Split”).

Holders

As of January 25, 2023, there were 8,686 holders of record of our common stock. A substantially greater number of holders of our common stock are “street name” or beneficial holders, whose shares are held by banks, brokers and other financial institutions.

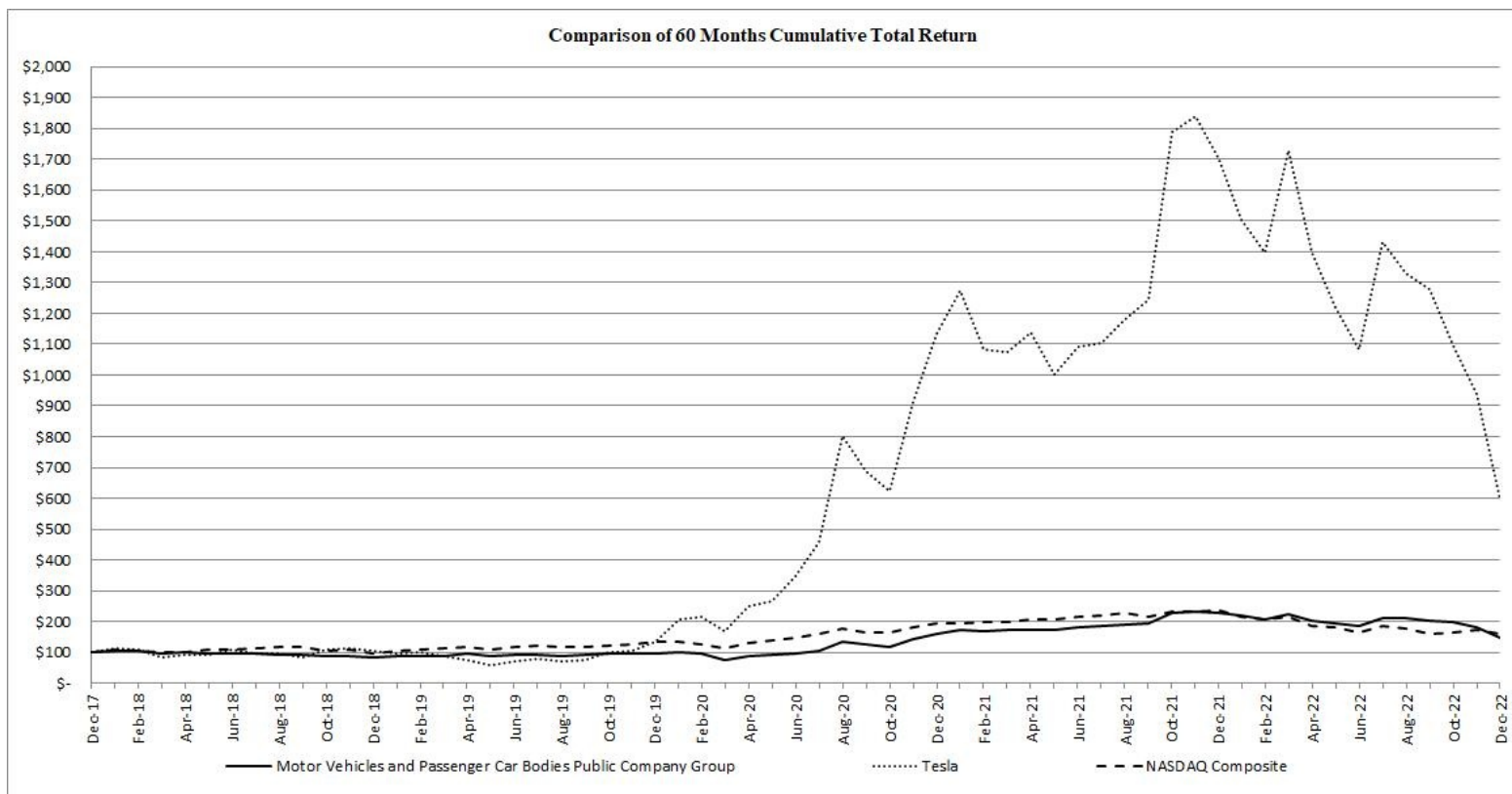
Dividend Policy

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

Stock Performance Graph

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

The following graph shows a comparison, from January 1, 2018 through December 31, 2022, of the cumulative total return on our common stock, The NASDAQ Composite Index and a group of all public companies sharing the same SIC code as us, which is SIC code 3711, “Motor Vehicles and Passenger Car Bodies” (Motor Vehicles and Passenger Car Bodies Public Company Group). Such returns are based on historical results and are not intended to suggest future performance. Data for The NASDAQ Composite Index and the Motor Vehicles and Passenger Car Bodies Public Company Group assumes an investment of \$100 on January 1, 2018 and reinvestment of dividends. We have never declared or paid cash dividends on our common stock nor do we anticipate paying any such cash dividends in the foreseeable future.



Unregistered Sales of Equity Securities and Use of Proceeds

None

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

ITEM 6. [RESERVED]

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

The following discussion and analysis should be read in conjunction with the consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K. For further discussion of our products and services, technology and competitive strengths, refer to Item 1- Business. For discussion related to changes in financial condition and the results of operations for fiscal year 2021-related items, refer to Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for fiscal year 2021, which was filed with the Securities and Exchange Commission on February 7, 2022.

Overview and 2022 Highlights

Our mission is to accelerate the world's transition to sustainable energy. We design, develop, manufacture, lease and sell high-performance fully electric vehicles, solar energy generation systems and energy storage products. We also offer maintenance, installation, operation, financial and other services related to our products. Additionally, we are increasingly focused on products and services based on artificial intelligence, robotics and automation.

In 2022, we produced 1,369,611 consumer vehicles and delivered 1,313,851 consumer vehicles, despite ongoing supply chain and logistics challenges and factory shutdowns. We are currently focused on increasing vehicle production, capacity and delivery capabilities, improving and developing battery technologies, improving our FSD capabilities, increasing the affordability and efficiency of our vehicles, bringing new products to market and expanding our global infrastructure.

In 2022, we deployed 6.5 GWh of energy storage products and 348 megawatts of solar energy systems. We are currently focused on ramping production of energy storage products, improving our Solar Roof installation capability and efficiency, and increasing market share of retrofit and new build solar energy systems.

In 2022, we recognized total revenues of \$81.46 billion, respectively, representing an increase of \$27.64 billion, compared to the prior year. We continue to ramp production, build new manufacturing capacity and expand our operations to enable increased deliveries and deployments of our products and further revenue growth.

In 2022, our net income attributable to common stockholders was \$12.56 billion, representing a favorable change of \$7.04 billion, compared to the prior year. We continue to focus on improving our profitability through production and operational efficiencies.

We ended 2022 with \$22.19 billion in cash and cash equivalents and investments, representing an increase of \$4.48 billion from the end of 2021. Our cash flows provided by operating activities during 2022 and 2021 were \$14.72 billion and \$11.50 billion, respectively, representing an increase of \$3.23 billion. Capital expenditures amounted to \$7.16 billion during 2022, compared to \$6.48 billion during 2021. Sustained growth has allowed our business to generally fund itself, and we will continue investing in a number of capital-intensive projects in upcoming periods.

Management Opportunities, Challenges and Uncertainties and 2023 Outlook

Automotive—Production

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

Production Location	Vehicle Model(s)	Production Status
Fremont Factory	Model S / Model X	Active
	Model 3 / Model Y	Active
Gigafactory Shanghai	Model 3 / Model Y	Active
Gigafactory Berlin-Brandenburg	Model Y	Active
Gigafactory Texas	Model Y	Active
	Cybertruck	Tooling
Gigafactory Nevada	Tesla Semi	Pilot production
TBD	Tesla Roadster	In development
TBD	Robotaxi & Others	In development

We are focused on growing our manufacturing capacity, which includes ramping all of our production vehicles to their installed production capacities as well as increasing production rate, efficiency and capacity at our current factories. The next phase of production growth will depend on the ramp at Gigafactory Berlin-Brandenburg and Gigafactory Texas, as well as our ability to add to our available sources of battery cell supply by manufacturing our own cells that we are developing to have high-volume output, lower capital and production costs and longer range. Our goals are to improve vehicle performance, decrease production costs and increase affordability.

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

Automotive—Demand and Sales

Our cost reduction efforts, cost innovation strategies, and additional localized procurement and manufacturing are key to our vehicles' affordability, and for example, have allowed us to competitively price our vehicles in China. We will also continue to generate demand and brand awareness by improving our vehicles' performance and functionality, including through products based on artificial intelligence such as Autopilot and FSD, and other software features, and delivering new vehicles, such as the Tesla Semi in December 2022. Moreover, we expect to continue to benefit from ongoing electrification of the automotive sector and increasing environmental awareness.

However, we operate in a cyclical industry that is sensitive to political and regulatory uncertainty, including with respect to trade and the environment, all of which can be compounded by inflationary pressures, rising energy prices, increases in interest rates and any future global impact from the COVID-19 pandemic. For example, in the earlier part of 2022, the automotive industry in general experienced part shortages and supplier disruptions which impacted production leading to a general increase in vehicle pricing. As the year progressed, inflationary pressures increased across the markets in which we operate. In an effort to curb this trend, central banks in developed countries raised interest rates rapidly and substantially, impacting the affordability of vehicle lease and finance arrangements. Further, sales of vehicles in the automotive industry also tend to be cyclical in many markets, which may expose us to increased volatility as we expand and adjust our operations. Moreover, as additional competitors enter the marketplace and help bring the world closer to sustainable transportation, we will have to adjust and continue to execute well to maintain our momentum. These macroeconomic and industry trends have had, and will likely continue to have, an impact on the pricing of, and order rate for our vehicles, and we will continue to adjust accordingly to such developments.

Automotive—Deliveries and Customer Infrastructure

As our production increases, we must work constantly to similarly increase vehicle delivery capability so that it does not become a bottleneck on our total deliveries. Beginning the second half of 2022, due to continuing challenges caused by vehicle transportation capacity during peak delivery periods, we began transitioning to a more even regional mix of vehicle builds each week, which led to an increase in cars in transit at the end of the year. Increasing the exports of vehicles manufactured at Gigafactory Shanghai has also been effective in mitigating the strain on our deliveries in markets outside of the United States, and we expect to benefit further from situating additional factories closer to local markets, including the production launch at Gigafactory Berlin-Brandenburg and Gigafactory Austin. As we expand our manufacturing operations globally, we will also have to continue to increase and staff our delivery, servicing and charging infrastructure accordingly, maintain our vehicle reliability and optimize our Supercharger locations to ensure cost effectiveness and customer satisfaction. In particular, we remain focused on increasing the capability and efficiency of our servicing operations.

Energy Generation and Storage Demand, Production and Deployment

The long-term success of this business is dependent upon increasing margins through greater volumes. We continue to increase the production of our energy storage products to meet high levels of demand. For Megapack, energy storage deployments can vary meaningfully quarter to quarter depending on the timing of specific project milestones. For Powerwall, better availability and growing grid stability concerns drive higher customer interest. We remain committed to growing our retrofit solar energy business by offering a low-cost and simplified online ordering experience. In addition, we continue to seek to improve our installation capabilities and price efficiencies for Solar Roof. As these product lines grow, we will have to maintain adequate battery cell supply for our energy storage products and hire additional personnel, particularly skilled electricians, to support the ramp of Solar Roof.

Cash Flow and Capital Expenditure Trends

Our capital expenditures are typically difficult to project beyond the short-term given the number and breadth of our core projects at any given time, and may further be impacted by uncertainties in future global market conditions. We are simultaneously ramping new products, ramping manufacturing facilities on three continents and piloting the development and manufacture of new battery cell technologies, and the pace of our capital spend may vary depending on overall priority among projects, the pace at which we meet milestones, production adjustments to and among our various products, increased capital efficiencies and the addition of new projects. Owing and subject to the foregoing as well as the pipeline of announced projects under development, all other continuing infrastructure growth and varying levels of inflation, we currently expect our capital expenditures to be between \$6.00 to \$8.00 billion in 2023 and between \$7.00 to \$9.00 billion in each of the following two fiscal years.

Our business has recently been consistently generating cash flow from operations in excess of our level of capital spend, and with better working capital management resulting in shorter days sales outstanding than days payable outstanding, our sales growth is also facilitating positive cash generation. We have and will continue to utilize such cash flows, among other things, to do more vertical integration, expand our product roadmap and provide financing options to our customers. On the other hand, we are likely to see heightened levels of capital expenditures during certain periods depending on the specific pace of our capital-intensive projects and rising material prices and increasing supply chain and labor expenses resulting from changes in global trade conditions and labor availability associated with the COVID-19 pandemic. Overall, we expect our ability to be self-funding to continue as long as macroeconomic factors support current trends in our sales.

Operating Expense Trends

As long as we see expanding sales, and excluding the potential impact of macroeconomic conditions including increased labor costs and impairment charges on certain assets as explained below, we generally expect operating expenses relative to revenues to decrease as we continue to increase operational efficiency and process automation. We expect operating expenses to continue to grow in 2023 as we are expanding our operations globally.

In the first quarter of 2021, we invested an aggregate \$1.50 billion in bitcoin. As with any investment and consistent with how we manage fiat-based cash and cash-equivalent accounts, we may increase or decrease our holdings of digital assets at any time based on the needs of the business and our view of market and environmental conditions. Digital assets are considered indefinite-lived intangible assets under applicable accounting rules. Accordingly, any decrease in their fair values below our carrying values for such assets at any time subsequent to their acquisition will require us to recognize impairment charges, whereas we may make no upward revisions for any market price increases until a sale. For any digital assets held now or in the future, these charges may negatively impact our profitability in the periods in which such impairments occur even if the overall market values of these assets increase. For example, in the year ended December 31, 2022, we recorded \$204 million of impairment losses resulting from changes to the carrying value of our bitcoin and gains of \$64 million on certain conversions of bitcoin into fiat currency by us.

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.

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

Revenue Recognition

Automotive Sales

Automotive sales revenue includes revenues related to cash and financing deliveries of new vehicles, and specific other features and services that meet the definition of a performance obligation under Accounting Standards Codification (“ASC”) 606, *Revenue from Contracts with Customers* (“ASC 606”), including access to our FSD features, internet connectivity, Supercharger network and over-the-air software updates. We recognize revenue on automotive sales upon delivery to the customer, which is when the control of a vehicle transfers. Payments are typically received at the point control transfers or in accordance with payment terms customary to the business, except sales we finance for which payments are collected over the contractual loan term. We also recognize a sales return reserve based on historical experience plus consideration for expected future market values, when we offer resale value guarantees or similar buyback terms. Other features and services such as access to our internet connectivity, legacy programs offering unlimited free Supercharging and over-the-air software updates are provisioned upon control transfer of a vehicle and recognized over time on a straight-line basis as we have a stand-ready obligation to deliver such services to the customer. Other limited free Supercharging incentives are recognized based on actual usage or expiration, whichever is earlier. We recognize revenue related to these other features and services over the performance period, which is generally the expected ownership life of the vehicle. Revenue related to FSD is recognized when functionality is delivered to the customer and the portion related to software updates is recognized over time. For our obligations related to automotive sales, we estimate standalone selling price by considering costs used to develop and deliver the service, third-party pricing of similar options and other information that may be available.

Any fees that are paid or payable by us to a customer’s lender when we arrange the financing are recognized as an offset against automotive sales revenue. Costs to obtain a contract mainly relate to commissions paid to our sales personnel for the sale of vehicles. As our contract costs related to automotive sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred. Amounts billed to customers related to shipping and handling are classified as automotive sales revenue, and we have elected to recognize the cost for freight and shipping when control over vehicles, parts or accessories have transferred to the customer as an expense in cost of automotive sales revenue. Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

We offer resale value guarantees or similar buy-back terms to certain international customers who purchase vehicles and who finance their vehicles through one of our specified commercial banking partners. Under these programs, we receive full payment for the vehicle sales price at the time of delivery and our counterparty has the option of selling their vehicle back to us during the guarantee period, which currently is generally at the end of the term of the applicable loan or financing program, for a pre-determined resale value. We account for such automotive sales as a sale with a right of return when we do not believe the customer has a significant economic incentive to exercise the resale value guarantee provided to them at contract inception. The process to determine whether there is a significant economic incentive includes a comparison of a vehicle’s estimated market value at the time the option is exercisable with the guaranteed resale value to determine the customer’s economic incentive to exercise. On a quarterly basis, we assess the estimated market values of vehicles sold with resale value guarantees to determine whether there have been changes to the likelihood of future product returns. As we accumulate more data related to the resale values of our vehicles or as market conditions change, there may be material changes to their estimated values.

Inventory Valuation

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

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

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

Warranties

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

Stock-Based Compensation

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

For performance-based awards, stock-based compensation expense is recognized over the expected performance achievement period of individual performance milestones when the achievement of each individual performance milestone becomes probable.

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

Income Taxes

We are subject to taxes in the U.S. and in many foreign jurisdictions. Significant judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our net deferred tax assets. We make these estimates and judgments about our future taxable income that are based on assumptions that are consistent with our future plans. Tax laws, regulations and administrative practices may be subject to change due to economic or political conditions including fundamental changes to the tax laws applicable to corporate multinationals. The U.S., many countries in the European Union and a number of other countries are actively considering changes in this regard. As of December 31, 2022, we had recorded a full valuation allowance on our net U.S. deferred tax assets because we expect that it is more likely than not that our U.S. deferred tax assets will not be realized. Should the actual amounts differ from our estimates, the amount of our valuation allowance could be materially impacted.

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

Results of Operations

Revenues

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Automotive sales	\$ 67,210	\$ 44,125	\$ 24,604	\$ 23,085	52%	\$ 19,521	79%
Automotive regulatory credits	1,776	1,465	1,580	311	21%	(115)	(7)%
Automotive leasing	2,476	1,642	1,052	834	51%	590	56%
Total automotive revenues	71,462	47,232	27,236	24,230	51%	19,996	73%
Services and other	6,091	3,802	2,306	2,289	60%	1,496	65%
Total automotive & services and other segment revenue	77,553	51,034	29,542	26,519	52%	21,492	73%
Energy generation and storage segment revenue	3,909	2,789	1,994	1,120	40%	795	40%
Total revenues	<u>\$ 81,462</u>	<u>\$ 53,823</u>	<u>\$ 31,536</u>	<u>\$ 27,639</u>	51%	<u>\$ 22,287</u>	71%

Automotive & Services and Other Segment

Automotive sales revenue includes revenues related to cash and financing deliveries of new Model S, Model X, Semi, Model 3, and Model Y vehicles, including access to our FSD features, internet connectivity, free Supercharging programs and over-the-air software updates. These deliveries are vehicles that are not subject to lease accounting.

Automotive regulatory credits includes sales of regulatory credits to other automotive manufacturers. Our revenue from automotive regulatory credits is directly related to our new vehicle production, sales and pricing negotiated with our customers. We monetize them proactively as new vehicles are sold based on standing arrangements with buyers of such credits, typically as close as possible to the production and delivery of the vehicle or changes in regulation impacting the credits.

Automotive leasing revenue includes the amortization of revenue for vehicles under direct operating lease agreements. Additionally, automotive leasing revenue includes direct sales-type leasing programs where we recognize all revenue associated with the sales-type lease upon delivery to the customer.

Services and other revenue consists of non-warranty after-sales vehicle services and parts, paid Supercharging, sales of used vehicles, retail merchandise and vehicle insurance revenue.

2022 compared to 2021

Automotive sales revenue increased \$23.09 billion, or 52%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to an increase of 347,024 Model 3 and Model Y deliveries, and an increase of 38,183 Model S and Model X deliveries year over year. This was achieved from production ramping of Model Y at Gigafactory Shanghai and the Fremont Factory as well as the start of production at Gigafactory Berlin-Brandenburg and Gigafactory Texas in 2022, at a higher combined average selling price from a higher proportion of Model Y sales despite a negative impact from the United States dollar strengthening against other foreign currencies in 2022 compared to the prior period. There was also an increase in production of Model S and Model X and an increase in the combined average selling price of Model S and Model X with a higher proportion of Model X sales, compared to the prior period as deliveries of the new versions of Model S and Model X began ramping in the second and fourth quarters of 2021, respectively. Further, during the fourth quarter of 2022, we recognized \$324 million in revenue related to the general FSD feature release in North America.

Automotive regulatory credits revenue increased \$311 million, or 21%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to changes in regulation which entitled us to additional consideration of \$288 million in revenue in the first quarter of 2022 for credits sold previously, in the absence of which we had only an immaterial increase in automotive regulatory credits revenue.

Automotive leasing revenue increased \$834 million, or 51%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The change is primarily due to an increase in activities under our direct operating lease program as well as an increase in direct sales-type leasing revenue.

Services and other revenue increased \$2.29 billion, or 60%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The change is primarily due to increase in used vehicle revenue driven by increases in volume and average selling prices of used Tesla and non-Tesla vehicles, non-warranty maintenance services revenue as our fleet continues to grow, paid Supercharging revenue, insurance services revenue and retail merchandise revenue.

Energy Generation and Storage Segment

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

2022 compared to 2021

Energy generation and storage revenue increased \$1.12 billion, or 40%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to an increase in energy storage deployments of Megapack, Powerwall and higher average selling price of Megapack, as well as on solar cash and loan deployments driven by price increases in 2022.

Cost of Revenues and Gross Margin

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Cost of revenues							
Automotive sales	\$ 49,599	\$ 32,415	\$ 19,696	\$ 17,184	53 %	\$ 12,719	65 %
Automotive leasing	1,509	978	563	531	54 %	415	74 %
Total automotive cost of revenues	51,108	33,393	20,259	17,715	53 %	13,134	65 %
Services and other	5,880	3,906	2,671	1,974	51 %	1,235	46 %
Total automotive & services and other segment cost of revenues	56,988	37,299	22,930	19,689	53 %	14,369	63 %
Energy generation and storage segment	3,621	2,918	1,976	703	24 %	942	48 %
Total cost of revenues	\$ 60,609	\$ 40,217	\$ 24,906	\$ 20,392	51 %	\$ 15,311	61 %
Gross profit							
Gross profit total automotive	\$ 20,354	\$ 13,839	\$ 6,977				
Gross margin total automotive	28.5 %	29.3 %	25.6 %				
Gross profit total automotive & services and other segment							
Gross profit total automotive & services and other segment	\$ 20,565	\$ 13,735	\$ 6,612				
Gross margin total automotive & services and other segment	26.5 %	26.9 %	22.4 %				
Gross profit energy generation and storage segment							
Gross profit energy generation and storage segment	\$ 288	\$ (129)	\$ 18				
Gross margin energy generation and storage segment	7.4 %	(4.6) %	0.9 %				
Total gross profit							
Total gross profit	\$ 20,853	\$ 13,606	\$ 6,630				
Total gross margin	25.6 %	25.3 %	21.0 %				

Automotive & Services and Other Segment

Cost of automotive sales revenue includes direct and indirect materials, 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 free Supercharging programs 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 depreciation of operating lease vehicles, cost of goods sold associated with direct sales-type leases and warranty expense related to leased vehicles. Cost of automotive leasing revenue also includes vehicle connectivity costs and allocations of electricity and infrastructure costs related to our Supercharger network for vehicles under our leasing programs.

Cost of services and other revenue includes costs associated with providing non-warranty after-sales services and parts, costs of paid Supercharging, cost of used vehicles including refurbishment costs, costs for retail merchandise, and costs to provide vehicle insurance.

2022 compared to 2021

Cost of automotive sales revenue increased \$17.18 billion, or 53%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, in line with the growth in revenue year over year, as discussed above. The average combined cost per unit of Model 3 and Model Y increased year over year due to rising raw material, logistics and warranty costs. There were also idle capacity charges of \$306 million primarily related to the temporary suspension of production at Gigafactory Shanghai as well as the ramping up of production in Gigafactory Texas and our proprietary battery cells manufacturing during the year ended December 31, 2022. We had also incurred costs related to the ramp up of production in Gigafactory Berlin-Brandenburg during the year ended December 31, 2022. These increases were partially offset by a decrease in combined average Model S and Model X costs per unit driven by lower average cost for the new versions from ramping up production. Further, these increases in costs of revenue were positively impacted by the United States dollar strengthening against other foreign currencies in 2022 compared to the prior period.

Cost of automotive leasing revenue increased \$531 million, or 54%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to an increase in cumulative vehicles under our direct operating lease program and an increase in direct sales-type leasing cost of revenues from more activities in the current year.

Cost of services and other revenue increased \$1.97 billion, or 51%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The change is primarily due to an increase in used vehicle cost of revenue driven by increases in volume and costs of used Tesla and non-Tesla vehicle sales, an increase in non-warranty maintenance service revenue, and an increase in costs of paid Supercharging, insurance services and retail merchandise.

Gross margin for total automotive decreased from 29.3% to 28.5% in the year ended December 31, 2022 as compared to the year ended December 31, 2021. This was driven by the changes in automotive sales revenue and cost of automotive sales revenue, partially offset by an increase in regulatory credits revenue, as discussed earlier.

Gross margin for total automotive & services and other segment decreased from 26.9% to 26.5% in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to the automotive gross margin decrease discussed above, partially offset by an improvement in our services and other gross margin. Additionally, services and other was a higher percentage of the segment gross margin during the year ended 2022 as compared to the prior year.

Energy Generation and Storage Segment

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

2022 compared to 2021

Cost of energy generation and storage revenue increased \$703 million, or 24%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to increases in energy storage deployments of Megapack and Powerwall, as well as higher average cost of solar cash and loan deployments due to increased component costs.

Gross margin for energy generation and storage increased from -4.6% to 7.4% in the year ended December 31, 2022 as compared to the year ended December 31, 2021. This was driven by the growth in energy generation and storage revenue and cost of energy generation and storage revenue as discussed above. Additionally, there was a higher proportion of energy storage sales, which operated at a higher gross margin, within the segment.

Research and Development Expense

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Research and development	\$ 3,075	\$ 2,593	\$ 1,491	\$ 482	19%	\$ 1,102	74%
As a percentage of revenues	4%	5%	5%				

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

R&D expenses increased \$482 million, or 19%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The increase was primarily due to a \$175 million increase in employee and labor related expenses, a \$132 million increase in facilities, outside services, freight and depreciation expense, a \$101 million increase in R&D expensed materials and an \$87 million increase in stock-based compensation expense. These increases were to support our expanding product roadmap and technologies including our proprietary battery cells. Further, there were additional R&D expenses in the first quarter of 2022 as we were in the pre-production phase at Gigafactory Texas and started production at Gigafactory Berlin-Brandenburg only closer to the end of the first quarter of 2022.

R&D expenses as a percentage of revenue decreased from 5% to 4% in the year ended December 31, 2022 as compared to the year ended December 31, 2021. Our R&D expenses have decreased as a proportion of total revenues despite expanding product roadmap and technologies.

Selling, General and Administrative Expense

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Selling, general and administrative	\$ 3,946	\$ 4,517	\$ 3,145	\$ (571)	(13)%	\$ 1,372	44%
As a percentage of revenues	5%	8%	10%				

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 decreased \$571 million, or 13%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. This is primarily due to a decrease of \$822 million in stock-based compensation expense, most of which is attributable to the lower stock-based compensation expense of \$844 million on the 2018 CEO Performance Award. This was partially offset by the overall growth in stock-based compensation due to increased headcount. See Note 13, *Equity Incentive Plans*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. There was also a decrease of \$87 million in overall employee and labor related expenses driven by a decrease of \$340 million of additional payroll tax due to our CEO's option exercises from the 2012 CEO Performance Award in 2021, partially offset by an increase in other employee and labor costs from increased headcount. These decreases were partially offset by an increase of \$222 million in facilities-related expenses, and an increase of \$117 million in professional services, sales and marketing activities and other costs.

SG&A expenses as a percentage of revenue decreased from 8% to 5% in the year ended December 31, 2022 as compared to the year ended December 31, 2021. Our SG&A expenses have decreased as a proportion of total revenues due to the decrease in expenses as discussed above, in addition to operational efficiencies.

Restructuring and Other Expense

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Restructuring and other	\$ 176	\$ (27)	\$ —	\$ 203	Not meaningful	\$ (27)	Not meaningful

During the years ended December 31, 2022 and 2021, we recorded \$204 million and \$101 million, respectively, of impairment losses on digital assets, respectively. During the years ended December 31, 2022 and 2021, we also realized gains of \$64 million and \$128 million, respectively, in connection with converting our holdings of digital assets into fiat currency. See Note 3, *Digital Assets, Net*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details. Additionally, we recorded other expenses of \$36 million during the second quarter of the year ended December 31, 2022, related to employee terminations.

Interest Income

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Interest income	\$ 297	\$ 56	\$ 30	\$ 241	430%	\$ 26	87%

Interest income increased \$241 million, or 430%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. This increase was primarily due to higher interest earned on our cash and cash equivalents and short-term investments during the year ended 2022 compared to the prior period. This was driven by an increase in our average cash and cash equivalents and short-term investments balance and rising interest rates.

Interest Expense

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Interest expense	\$ (191)	\$ (371)	\$ (748)	\$ 180	(49)%	\$ 377	(50)%

Interest expense decreased \$180 million, or 49%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. This decrease was primarily due to the continued reduction in our overall debt balance offset by lower capitalized interest. See Note 11, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details.

Other (Expense) Income, Net

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Other (expense) income, net	\$ (43)	\$ 135	\$ (122)	\$ (178)	Not meaningful	\$ 257	Not meaningful

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

Other (expense) income, net, changed unfavorably by \$178 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The change is primarily due to fluctuations in foreign currency exchange rates.

Provision for Income Taxes

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Provision for income taxes	\$ 1,132	\$ 699	\$ 292	\$ 433	62%	\$ 407	139%
Effective tax rate	8%	11%	25%				

Our provision for income taxes increased by \$433 million, or 62%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to the increase in our pre-tax income year over year.

Our effective tax rate decreased from 11% to 8% in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to changes in mix of jurisdictional earnings.

See Note 14, *Income Taxes*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details.

Net Income Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

(Dollars in millions)	Year Ended December 31,			2022 vs. 2021 Change		2021 vs. 2020 Change	
	2022	2021	2020	\$	%	\$	%
Net income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	\$ 31	\$ 125	\$ 141	\$ (94)	(75)%	\$ (16)	(11)%

Net income attributable to noncontrolling interests and redeemable noncontrolling interests decreased by \$94 million, or 75%, in the year ended December 31, 2022 as compared to the year ended December 31, 2021. These changes were due to a decrease in allocations to financing fund investors.

Liquidity and Capital Resources

We expect to continue to generate net positive operating cash flow as we have done in the last four fiscal years. The cash we generate from our core operations enables us to fund ongoing operations and production, our research and development projects for new products and technologies including our proprietary battery cells, additional manufacturing ramps at existing manufacturing facilities such as the Fremont Factory, Gigafactory Nevada, Gigafactory Shanghai and Gigafactory New York, the ramp of Gigafactory Berlin-Brandenburg and Gigafactory Texas and the continued expansion of our retail and service locations, body shops, Mobile Service fleet, Supercharger network and energy product installation capabilities.

In addition, because a large portion of our future expenditures will be to fund our growth, we expect that if needed we will be able to adjust our capital and operating expenditures by operating segment. For example, if our near-term manufacturing operations decrease in scale or ramp more slowly than expected, including due to global economic or business conditions, we may choose to correspondingly slow the pace of our capital expenditures. Finally, we continually evaluate our cash needs and may decide it is best to raise additional capital or seek alternative financing sources to fund the rapid growth of our business, including through drawdowns on existing or new debt facilities or financing funds. Conversely, we may also from time to time determine that it is in our best interests to voluntarily repay certain indebtedness early.

Accordingly, we believe that our current sources of funds will provide us with adequate liquidity during the 12-month period following December 31, 2022, as well as in the long-term.

See the sections below for more details regarding the material requirements for cash in our business and our sources of liquidity to meet such needs.

Material Cash Requirements

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. However, due to contractual terms, variability in the precise growth curves of our development and production ramps, and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders under such contracts beyond the short-term, and the timing and magnitude of purchase orders beyond such period is difficult to accurately project.

As discussed in and subject to the considerations referenced in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations—Management Opportunities, Challenges and Risks and 2023 Outlook—Cash Flow and Capital Expenditure Trends* in this Annual Report on Form 10-K, we currently expect our capital expenditures to support our projects globally to be between \$6.00 to \$8.00 billion in 2023 and between \$7.00 to \$9.00 billion in each of the following two fiscal years. In connection with our operations at Gigafactory New York, we have an agreement to spend or incur \$5.00 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York through December 31, 2029 (pursuant to a deferral of our required timelines to meet such obligations that was granted in April 2021, and which was memorialized in an amendment to our agreement with the SUNY Foundation in August 2021). We also have an operating lease arrangement with the local government of Shanghai pursuant to which we are required to spend RMB 14.08 billion in capital expenditures at Gigafactory Shanghai by the end of 2023. For details regarding these obligations, refer to Note 15, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

As of December 31, 2022, we and our subsidiaries had outstanding \$2.06 billion in aggregate principal amount of indebtedness, of which \$1.02 billion is scheduled to become due in the succeeding 12 months. As of December 31, 2022, our total minimum lease payments was \$4.28 billion, of which \$1.14 billion is due in the succeeding 12 months. For details regarding our indebtedness and lease obligations, refer to Note 11, *Debt*, and Note 12, *Leases*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Sources and Conditions of Liquidity

Our sources to fund our material cash requirements are predominantly from our deliveries and servicing of new and used vehicles, sales and installations of our energy storage products and solar energy systems, proceeds from debt facilities and proceeds from equity offerings, when applicable.

As of December 31, 2022, we had \$16.25 billion and \$5.93 billion of cash and cash equivalents and short-term investments, respectively. Balances held in foreign currencies had a U.S. dollar equivalent of \$3.42 billion and consisted primarily of Chinese yuan, euros and British pounds. In addition, we had \$2.42 billion of unused committed amounts under our credit facilities as of December 31, 2022, which included \$2.27 billion under our Credit Agreement which was terminated in January 2023. Certain of such unused committed amounts 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 or various other assets). In January 2023, we entered into an unsecured revolving credit facility providing for a commitment of up to \$5.0 billion. For details regarding our indebtedness, refer to Note 11, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

We continue adapting our strategy to meet our liquidity and risk objectives, such as investing in U.S. government and other investments, to do more vertical integration, expand our product roadmap and provide financing options to our customers.

Summary of Cash Flows

(Dollars in millions)	Year Ended December 31,		
	2022	2021	2020
Net cash provided by operating activities	\$ 14,724	\$ 11,497	\$ 5,943
Net cash used in investing activities	\$ (11,973)	\$ (7,868)	\$ (3,132)
Net cash (used in) provided by financing activities	\$ (3,527)	\$ (5,203)	\$ 9,973

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. Our operating cash inflows include cash from vehicle sales and related servicing, customer lease and financing payments, customer deposits, cash from sales of regulatory credits and energy generation and storage products. These cash inflows are offset by our payments to suppliers for production materials and parts used in our manufacturing process, operating expenses, operating lease payments and interest payments on our financings.

Net cash provided by operating activities increased by \$3.23 billion to \$14.72 billion during the year ended December 31, 2022 from \$11.50 billion during the year ended December 31, 2021. This increase was primarily due to the increase in net income excluding non-cash expenses, gains and losses of \$7.65 billion, offset by the overall increase in net operating assets and liabilities of \$4.43 billion. The increase in our net operating assets and liabilities was mainly driven by a larger increase of inventory in the year ended December 31, 2022 as compared to the year ended December 31, 2021, partially offset by a larger increase of accounts payable and accrued liabilities, to support the ramp up in production at our factories and larger increases in other non-current assets and prepaid expenses and other current assets. Additionally, the increase in our net operating assets and other liabilities was partially offset by a larger increase in other long-term liabilities as compared to the prior year.

Cash Flows from Investing Activities

Cash flows from investing activities and their variability across each period related primarily to capital expenditures, which were \$7.16 billion for the year ended December 31, 2022 and \$6.48 billion for the year ended December 31, 2021, mainly for the expansions of Gigafactory Texas, the Fremont Factory, Gigafactory Berlin-Brandenburg, and Gigafactory Shanghai. We also purchased \$5.84 billion of investments in the year ended December 31, 2022. Additionally, cash inflows related to sales of digital assets were \$936 million in the year ended December 31, 2022, and net cash outflows related to digital assets were \$1.23 billion in the year ended December 31, 2021 from purchases of digital assets for \$1.50 billion offset by proceeds from sales of digital assets of \$272 million.

Cash Flows from Financing Activities

Net cash used in financing activities decreased by \$1.68 billion to \$3.53 billion during the year ended December 31, 2022 from \$5.20 billion during the year ended December 31, 2021. The decrease was primarily due to a \$1.92 billion decrease in repayments of convertible and other debt, net of proceeds from issuances of debt. See Note 11, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details regarding our debt obligations.

Recent Accounting Pronouncements

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

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

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

We have also experienced, and will continue to experience, fluctuations in our net income 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).

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 before income taxes. These changes would have resulted in a gain or loss of \$473 million at December 31, 2022 and \$277 million at December 31, 2021, assuming no foreign currency hedging.

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Report of Independent Registered Public Accounting Firm

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

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Tesla, Inc. and its subsidiaries (the "Company") as of December 31, 2022 and 2021, and the related consolidated statements of operations, of comprehensive income, of redeemable noncontrolling interests and equity and of cash flows for each of the three years in the period ended December 31, 2022, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control - Integrated Framework (2013) issued by the COSO.

Changes in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for convertible debt in 2021.

Basis for Opinions

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

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

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

Definition and Limitations of Internal Control over Financial Reporting

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

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

Critical Audit Matters

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

Automotive Warranty Reserve

As described in Note 2 to the consolidated financial statements, total accrued warranty, which primarily relates to the automotive segment, was \$3,505 million as of December 31, 2022. The Company provides a manufacturer's warranty on all new and used Tesla vehicles. A warranty reserve is accrued for these products sold, which includes management's best estimate of the projected costs to repair or replace items under warranty and recalls if identified. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims.

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

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to management's estimate of the automotive warranty reserve for certain Tesla vehicle models, including controls over management's significant assumptions related to the nature, frequency and costs of future claims as well as the completeness and accuracy of actual claims incurred to date. These procedures also included, among others, performing one of the following: (i) testing management's process for determining the automotive warranty reserve for certain Tesla vehicle models or (ii) developing an independent estimate of the automotive warranty reserve for certain Tesla vehicle models and comparing the independent estimate to management's estimate to evaluate the reasonableness of the estimate. Testing management's process involved evaluating the reasonableness of significant assumptions related to the nature and frequency of future claims and the related costs to repair or replace items under warranty. Evaluating the assumptions related to the nature and frequency of future claims and the related costs to repair or replace items under warranty involved evaluating whether the assumptions used were reasonable by performing a lookback analysis comparing prior period forecasted claims to actual claims incurred. Developing the independent estimate involved testing the completeness and accuracy of historical vehicle claims processed and testing that such claims were appropriately used by management in the estimation of future claims. Professionals with specialized skill and knowledge were used to assist in developing an independent estimate of the automotive warranty reserve for certain Tesla vehicle models and in evaluating the appropriateness of certain aspects of management's significant assumptions related to the nature and frequency of future claims.

/s/ PricewaterhouseCoopers LLP

San Jose, California
January 30, 2023

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

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

	December 31, 2022	December 31, 2021
Assets		
Current assets		
Cash and cash equivalents	\$ 16,253	\$ 17,576
Short-term investments	5,932	131
Accounts receivable, net	2,952	1,913
Inventory	12,839	5,757
Prepaid expenses and other current assets	2,941	1,723
Total current assets	40,917	27,100
Operating lease vehicles, net	5,035	4,511
Solar energy systems, net	5,489	5,765
Property, plant and equipment, net	23,548	18,884
Operating lease right-of-use assets	2,563	2,016
Digital assets, net	184	1,260
Intangible assets, net	215	257
Goodwill	194	200
Other non-current assets	4,193	2,138
Total assets	\$ 82,338	\$ 62,131
Liabilities		
Current liabilities		
Accounts payable	\$ 15,255	\$ 10,025
Accrued liabilities and other	7,142	5,719
Deferred revenue	1,747	1,447
Customer deposits	1,063	925
Current portion of debt and finance leases	1,502	1,589
Total current liabilities	26,709	19,705
Debt and finance leases, net of current portion	1,597	5,245
Deferred revenue, net of current portion	2,804	2,052
Other long-term liabilities	5,330	3,546
Total liabilities	36,440	30,548
Commitments and contingencies (Note 15)		
Redeemable noncontrolling interests in subsidiaries	409	568
Equity		
Stockholders' equity		
Preferred stock; \$0.001 par value; 100 shares authorized; no shares issued and outstanding	—	—
Common stock; \$0.001 par value; 6,000 shares authorized; 3,164 and 3,100 shares issued and outstanding as of December 31, 2022 and December 31, 2021, respectively (1)	3	3
Additional paid-in capital	32,177	29,803
Accumulated other comprehensive (loss) income	(361)	54
Retained earnings (1)	12,885	329
Total stockholders' equity	44,704	30,189
Noncontrolling interests in subsidiaries	785	826
Total liabilities and equity	\$ 82,338	\$ 62,131

(1) Prior period results have been adjusted to reflect the three-for-one stock split effected in the form of a stock dividend in August 2022. See Note 1, *Overview*, for details.

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

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

	Year Ended December 31,		
	2022	2021	2020
Revenues			
Automotive sales	\$ 67,210	\$ 44,125	\$ 24,604
Automotive regulatory credits	1,776	1,465	1,580
Automotive leasing	2,476	1,642	1,052
Total automotive revenues	71,462	47,232	27,236
Energy generation and storage	3,909	2,789	1,994
Services and other	6,091	3,802	2,306
Total revenues	81,462	53,823	31,536
Cost of revenues			
Automotive sales	49,599	32,415	19,696
Automotive leasing	1,509	978	563
Total automotive cost of revenues	51,108	33,393	20,259
Energy generation and storage	3,621	2,918	1,976
Services and other	5,880	3,906	2,671
Total cost of revenues	60,609	40,217	24,906
Gross profit	20,853	13,606	6,630
Operating expenses			
Research and development	3,075	2,593	1,491
Selling, general and administrative	3,946	4,517	3,145
Restructuring and other	176	(27)	—
Total operating expenses	7,197	7,083	4,636
Income from operations	13,656	6,523	1,994
Interest income	297	56	30
Interest expense	(191)	(371)	(748)
Other (expense) income, net	(43)	135	(122)
Income before income taxes	13,719	6,343	1,154
Provision for income taxes	1,132	699	292
Net income	12,587	5,644	862
Net income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	31	125	141
Net income attributable to common stockholders	\$ 12,556	\$ 5,519	\$ 721
Net income per share of common stock attributable to common stockholders (1)			
Basic	\$ 4.02	\$ 1.87	\$ 0.25
Diluted	\$ 3.62	\$ 1.63	\$ 0.21
Weighted average shares used in computing net income per share of common stock (1)			
Basic	3,130	2,959	2,798
Diluted	3,475	3,386	3,249

(1) Prior period results have been adjusted to reflect the three-for-one stock split effected in the form of a stock dividend in August 2022. See Note 1, *Overview*, for details.

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

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

	Year Ended December 31,		
	2022	2021	2020
Net income	\$ 12,587	\$ 5,644	\$ 862
Other comprehensive (loss) income:			
Foreign currency translation adjustment	(392)	(308)	399
Unrealized net loss on investments	(23)	(1)	—
Comprehensive income	12,172	5,335	1,261
Less: Comprehensive income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	31	125	141
Comprehensive income attributable to common stockholders	<u>\$ 12,141</u>	<u>\$ 5,210</u>	<u>\$ 1,120</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)

	Redeemable Noncontrolling Interests	Common Stock		Additio nal Paid-In Capital	Accumulate d Other Comprehens ive (Loss) Income	(Accumulate d Deficit) Retained Earnings (1)	Total Stockholde rs' Equity	Noncontrolli ng Interests in Subsidiaries	Total Equity
		Shares	Amount						
		(1)	(1)						
				12,73					7,46
Balance as of December 31, 2019	\$ 643	2,716	\$ 3	\$ 6	\$ (36)	\$ (6,085)	\$ 6,618	\$ 849	\$ 7
Adjustments for prior periods from adopting ASU 2016-13	—	—	—	—	—	(37)	(37)	—	(37)
Reclassification between equity and mezzanine equity for convertible senior notes	—	—	—	(51)	—	—	(51)	—	(51)
Exercises of conversion feature of convertible senior notes	—	5	0	59	—	—	59	—	59
Issuance of common stock for equity incentive awards	—	55	0	417	—	—	417	—	417
				12,26					12,2
Issuance of common stock in public offerings, net of issuance costs of \$68	—	103	0	9	—	—	12,269	—	69
									1,86
Stock-based compensation	—	—	—	1,861	—	—	1,861	—	1
Contributions from noncontrolling interests	7	—	—	—	—	—	—	17	17
Distributions to noncontrolling interests	(67)	—	—	—	—	—	—	(132)	(132)
Buy-outs of noncontrolling interests	(4)	—	—	(31)	—	—	(31)	—	(31)
Net income	25	—	—	—	—	721	721	116	837
Other comprehensive income	—	—	—	—	399	—	399	—	399
									23,0
Balance as of December 31, 2020	\$ 604	2,879	\$ 3	\$ 0	\$ 363	\$ (5,401)	\$ 22,225	\$ 850	\$ 75
Adjustments for prior periods from adopting ASU 2020-06	—	—	—	(474)	—	211	(263)	—	(263)
Exercises of conversion feature of convertible senior notes	—	2	0	6	—	—	6	—	6
Settlements of warrants	—	112	0	—	—	—	—	—	—
Issuance of common stock for equity incentive awards	—	107	0	707	—	—	707	—	707
									2,29
Stock-based compensation	—	—	—	2,299	—	—	2,299	—	9
Contributions from noncontrolling interests	2	—	—	—	—	—	—	—	—
Distributions to noncontrolling interests	(66)	—	—	—	—	—	—	(106)	(106)
Buy-outs of noncontrolling interests	(15)	—	—	5	—	—	5	—	5
									5,60
Net income	43	—	—	—	—	5,519	5,519	82	1
Other comprehensive loss	—	—	—	—	(309)	—	(309)	—	(309)
									31,0
Balance as of December 31, 2021	\$ 568	\$ 3,100	\$ 3	\$ 3	\$ 54	\$ 329	\$ 30,189	\$ 826	\$ 15
Exercises of conversion feature of convertible senior notes	—	0	0	0	—	—	—	—	—
Settlements of warrants	—	37	0	0	—	—	—	—	—
Issuance of common stock for equity incentive awards	—	27	0	541	—	—	541	—	541
									1,80
Stock-based compensation	—	—	—	1,806	—	—	1,806	—	6
Distributions to noncontrolling interests	(46)	—	—	—	—	—	—	(113)	(113)
Buy-outs of noncontrolling interests	(11)	—	—	27	—	—	27	(61)	(34)
									12,6
Net (loss) income	(102)	—	—	—	—	12,556	12,556	133	89
Other comprehensive loss	—	—	—	—	(415)	—	(415)	—	(415)
									45,4
Balance as of December 31, 2022	\$ 409	3,164	\$ 3	\$ 7	\$ (361)	\$ 12,885	\$ 44,704	\$ 785	\$ 89

(1) Prior period results have been adjusted to reflect the three-for-one stock split effected in the form of a stock dividend in August 2022. See Note 1, *Overview*, for details.

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

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

	Year Ended December 31,		
	2022	2021	2020
Cash Flows from Operating Activities			
Net income	\$ 12,587	\$ 5,644	\$ 862
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation, amortization and impairment	3,747	2,911	2,322
Stock-based compensation	1,560	2,121	1,734
Inventory and purchase commitments write-downs	177	140	202
Foreign currency transaction net unrealized loss (gain)	81	(55)	114
Non-cash interest and other operating activities	340	245	525
Digital assets loss (gain), net	140	(27)	—
Changes in operating assets and liabilities:			
Accounts receivable	(1,124)	(130)	(652)
Inventory	(6,465)	(1,709)	(422)
Operating lease vehicles	(1,570)	(2,114)	(1,072)
Prepaid expenses and other current assets	(1,417)	(271)	(251)
Other non-current assets	(2,551)	(1,291)	(344)
Accounts payable and accrued liabilities	6,029	4,578	2,102
Deferred revenue	1,131	793	321
Customer deposits	155	186	7
Other long-term liabilities	1,904	476	495
Net cash provided by operating activities	<u>14,724</u>	<u>11,497</u>	<u>5,943</u>
Cash Flows from Investing Activities			
Purchases of property and equipment excluding finance leases, net of sales	(7,158)	(6,482)	(3,157)
Purchases of solar energy systems, net of sales	(5)	(32)	(75)
Purchases of digital assets	—	(1,500)	—
Proceeds from sales of digital assets	936	272	—
Purchase of intangible assets	(9)	—	(10)
Purchases of investments	(5,835)	(132)	—
Proceeds from maturities of investments	22	—	—
Receipt of government grants	76	6	123
Business combinations, net of cash acquired	—	—	(13)
Net cash used in investing activities	<u>(11,973)</u>	<u>(7,868)</u>	<u>(3,132)</u>
Cash Flows from Financing Activities			
Proceeds from issuances of common stock in public offerings, net of issuance costs	—	—	12,269
Proceeds from issuances of debt	—	8,883	9,713
Repayments of convertible and other debt	(3,364)	(14,167)	(11,623)
Collateralized lease repayments	—	(9)	(240)
Proceeds from exercises of stock options and other stock issuances	541	707	417
Principal payments on finance leases	(502)	(439)	(338)
Debt issuance costs	—	(9)	(6)
Proceeds from investments by noncontrolling interests in subsidiaries	—	2	24
Distributions paid to noncontrolling interests in subsidiaries	(157)	(161)	(208)
Payments for buy-outs of noncontrolling interests in subsidiaries	(45)	(10)	(35)
Net cash (used in) provided by financing activities	<u>(3,527)</u>	<u>(5,203)</u>	<u>9,973</u>
Effect of exchange rate changes on cash and cash equivalents and restricted cash	(444)	(183)	334
Net (decrease) increase in cash and cash equivalents and restricted cash	(1,220)	(1,757)	13,118
Cash and cash equivalents and restricted cash, beginning of period	18,144	19,901	6,783
Cash and cash equivalents and restricted cash, end of period	<u>\$ 16,924</u>	<u>\$ 18,144</u>	<u>\$ 19,901</u>
Supplemental Non-Cash Investing and Financing Activities			
Acquisitions of property and equipment included in liabilities	\$ 2,148	\$ 2,251	\$ 1,088
Supplemental Disclosures			
Cash paid during the period for interest, net of amounts capitalized	\$ 152	\$ 266	\$ 444
Cash paid during the period for taxes, net of refunds	\$ 1,203	\$ 561	\$ 115

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

Notes to Consolidated Financial Statements**Note 1 - Overview**

Tesla, Inc. (“Tesla”, the “Company”, “we”, “us” or “our”) was incorporated in the State of Delaware on July 1, 2003. We design, develop, manufacture, sell and lease high-performance fully electric vehicles and energy generation and storage systems, and offer services related to our 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.

Since the first quarter of 2020, there has been a worldwide impact from the COVID-19 pandemic, as well as an easing of restrictions on social, business, travel and government activities and functions. There are ongoing global impacts resulting from the pandemic, and we have been affected by temporary manufacturing closures, employment and compensation adjustments and impediments to administrative activities supporting our product deliveries and deployments. In addition, we have experienced and are experiencing the impacts of varying levels of inflation caused by the COVID-19 pandemic and general global economic conditions.

On August 5, 2022, we increased the number of authorized shares of common stock by 4,000,000,000 shares and our Board of Directors declared the 2022 Stock Split. Each stockholder of record on August 17, 2022 received a dividend of two additional shares of common stock for each then-held share, distributed after close of trading on August 24, 2022. All share and per share amounts presented herein have been retroactively adjusted to reflect the impact of the 2022 Stock Split.

Note 2 - Summary of Significant Accounting Policies*Principles of Consolidation*

The accompanying consolidated financial statements have been prepared in conformity with GAAP and reflect our accounts and operations and those of our subsidiaries in which we have a controlling financial interest. In accordance with the provisions of ASC 810, *Consolidation* (“ASC 810”), we consolidate any variable interest entity (“VIE”) of which we are the primary beneficiary. We have formed VIEs with financing fund investors in the ordinary course of business in order to facilitate the funding and monetization of certain attributes associated with solar energy systems and leases under our direct vehicle leasing programs. The typical condition for a controlling financial interest ownership is holding a majority of the voting interests of an entity; however, a controlling financial interest may also exist in entities, such as VIEs, through arrangements that do not involve controlling voting interests. ASC 810 requires a variable interest holder to consolidate a VIE if that party has the power to direct the activities of the VIE that most significantly impact the VIE’s economic performance and the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. We do not consolidate a VIE in which we have a majority ownership interest when we are not considered the primary beneficiary. We have determined that we are the primary beneficiary of all the VIEs (see Note 16, *Variable Interest Entity Arrangements*). We evaluate our relationships with all the VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary. All intercompany transactions and balances have been eliminated upon consolidation.

Use of Estimates

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

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in the consolidated financial statements and the accompanying notes.

Revenue Recognition

Revenue by source

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

	Year Ended December 31,		
	2022	2021	2020
Automotive sales (1)	\$ 67,210	\$ 44,125	\$ 24,604
Automotive regulatory credits	1,776	1,465	1,580
Energy generation and storage sales	3,376	2,279	1,477
Services and other	6,091	3,802	2,306
Total revenues from sales and services	78,453	51,671	29,967
Automotive leasing	2,476	1,642	1,052
Energy generation and storage leasing	533	510	517
Total revenues	\$ 81,462	\$ 53,823	\$ 31,536

- (1) Pricing adjustments on our vehicle offerings can impact the estimate of likelihood that customers would exercise their resale value guarantees, resulting in an adjustment of our sales return reserve on vehicles sold with resale value guarantees. Actual return rates being lower than expected and increases in resale values of our vehicles in 2021 resulted in a net release of our reserve of \$365 million for the year ended December 31, 2021, which represented increases in automotive sales revenue. The net release or increase of reserves which impacted automotive sales revenue were immaterial for the years ended December 31, 2022 and December 31, 2020. Further, \$324 million of the total revenue recognized as of December 31, 2022 is related to the general FSD feature release in North America in the fourth quarter of 2022.

Automotive Segment

Automotive Sales

Automotive sales revenue includes revenues related to cash and financing deliveries of new vehicles, and specific other features and services that meet the definition of a performance obligation under ASC 606, including access to our FSD features, internet connectivity, Supercharger network and over-the-air software updates. We recognize revenue on automotive sales upon delivery to the customer, which is when the control of a vehicle transfers. Payments are typically received at the point control transfers or in accordance with payment terms customary to the business, except sales we finance for which payments are collected over the contractual loan term. We also recognize a sales return reserve based on historical experience plus consideration for expected future market values, when we offer resale value guarantees or similar buyback terms. Other features and services such as access to our internet connectivity, legacy programs offering unlimited free Supercharging and over-the-air software updates are provisioned upon control transfer of a vehicle and recognized over time on a straight-line basis as we have a stand-ready obligation to deliver such services to the customer. Other limited free Supercharging incentives are recognized based on actual usage or expiration, whichever is earlier. We recognize revenue related to these other features and services over the performance period, which is generally the expected ownership life of the vehicle. Revenue related to FSD is recognized when functionality is delivered to the customer and the portion related to software updates is recognized over time. For our obligations related to automotive sales, we estimate standalone selling price by considering costs used to develop and deliver the service, third-party pricing of similar options and other information that may be available.

Any fees that are paid or payable by us to a customer's lender when we arrange the financing are recognized as an offset against automotive sales revenue. Costs to obtain a contract mainly relate to commissions paid to our sales personnel for the sale of vehicles. As our contract costs related to automotive sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred. Amounts billed to customers related to shipping and handling are classified as automotive sales revenue, and we have elected to recognize the cost for freight and shipping when control over vehicles, parts or accessories have transferred to the customer as an expense in cost of automotive sales revenue. Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

We offer resale value guarantees or similar buy-back terms to certain international customers who purchase vehicles and who finance their vehicles through one of our specified commercial banking partners. Under these programs, we receive full payment for the vehicle sales price at the time of delivery and our counterparty has the option of selling their vehicle back to us during the guarantee period, which currently is generally at the end of the term of the applicable loan or financing program, for a pre-determined resale value. We account for such automotive sales as a sale with a right of return when we do not believe the customer has a significant economic incentive to exercise the resale value guarantee provided to them at contract inception. The process to determine whether there is a significant economic incentive includes a comparison of a vehicle's estimated market value at the time the option is exercisable with the guaranteed resale value to determine the customer's economic incentive to exercise. On a quarterly basis, we assess the estimated market values of vehicles sold with resale value guarantees to determine whether there have been changes to the likelihood of future product returns. As we accumulate more data related to the resale values of our vehicles or as market conditions change, there may be material changes to their estimated values. The total sales return reserve on vehicles sold with resale value guarantees was \$91 million and \$223 million as of December 31, 2022 and 2021, respectively, of which \$40 million and \$91 million was short-term, respectively.

Deferred revenue related to the access to our FSD features, internet connectivity, free Supercharging programs and over-the-air software updates primarily on automotive sales consisted of the following (in millions):

	Year ended December 31,	
	2022	2021
Deferred revenue— beginning of period	\$ 2,382	\$ 1,926
Additions	1,178	847
Net changes in liability for pre-existing contracts	(67)	(25)
Revenue recognized	(580)	(366)
Deferred revenue— end of period	<u>\$ 2,913</u>	<u>\$ 2,382</u>

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, 2021 was \$472 million as of December 31, 2022, primarily related to the general FSD feature release in North America in the fourth quarter of 2022. We had recognized revenue of \$312 million from the deferred revenue balance as of December 31, 2020, for the year ended December 31, 2021. Of the total deferred revenue balance as of December 31, 2022, we expect to recognize \$639 million of revenue in the next 12 months. The remaining balance will be recognized at the time of transfer of control of the product or over the performance period as discussed above in Automotive Sales.

We have been providing loans for financing our automotive deliveries during the year ended December 31, 2022. We have recorded net financing receivables on the consolidated balance sheets, of which \$128 million is recorded within Accounts receivable, net, for the current portion and \$665 million is recorded within Other non-current assets for the long-term portion, as of December 31, 2022.

Automotive Regulatory Credits

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

Payments for automotive regulatory credits are typically received at the point control transfers to the customer, or in accordance with payment terms customary to the business. We recognize revenue on the sale of automotive regulatory credits, which have negligible incremental costs associated with them, at the time control of the regulatory credits is transferred to the purchasing party. Deferred revenue related to sales of automotive regulatory credits was immaterial as of December 31, 2022 and 2021. Revenue recognized from the deferred revenue balance as of December 31, 2021 and 2020 was immaterial for the years ended December 31, 2022 and 2021. During the year ended December 31, 2022, we had also recognized \$288 million in revenue due to changes in regulation which entitled us to additional consideration for credits sold previously.

Automotive Leasing Revenue

Direct Vehicle Operating Leasing Program

We have outstanding leases under our direct vehicle operating leasing programs in the U.S., Canada and in certain countries in Europe. Qualifying customers are permitted to lease a vehicle directly from Tesla for up to 48 months. At the end of the lease term, customers are generally required to return the vehicles to us. We account for these leasing transactions as operating leases. We record leasing revenues to automotive leasing revenue on a straight-line basis over the contractual term, and we record the depreciation of these vehicles to cost of automotive leasing revenue. For the years ended December 31, 2022, 2021 and 2020, we recognized \$1.75 billion, \$1.25 billion and \$752 million of direct vehicle leasing revenue, respectively. As of December 31, 2022 and 2021, we had deferred \$407 million and \$392 million, respectively, of lease-related upfront payments, which will be recognized on a straight-line basis over the contractual terms of the individual leases.

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

Direct Sales-Type Leasing Program

We have outstanding direct leases and vehicles financed by us under loan arrangements accounted for as sales-type leases under ASC 842, *Leases* ("ASC 842"), in certain countries in Asia and Europe. Depending on the specific program, customers may or may not have a right to return the vehicle to us during or at the end of the lease term. If the customer does not have a right to return, the customer will take title to the vehicle at the end of the lease term after making all contractual payments. Under the programs for which there is a right to return, the purchase option is reasonably certain to be exercised by the lessee and we therefore expect the customer to take title to the vehicle at the end of the lease term after making all contractual payments. Our arrangements under these programs can have terms for up to 72 months. We recognize all revenue and costs associated with the sales-type lease as automotive leasing revenue and automotive leasing cost of revenue, respectively, upon delivery of the vehicle to the customer. Interest income based on the implicit rate in the lease is recorded to automotive leasing revenue over time as customers are invoiced on a monthly basis. For the years ended December 31, 2022, 2021 and 2020, we recognized \$683 million, \$369 million and \$120 million, respectively, of sales-type leasing revenue and \$427 million, \$234 million and \$87 million, respectively, of sales-type leasing cost of revenue.

Services and Other Revenue

Services and other revenue consists of non-warranty after-sales vehicle services and parts, sales of used vehicles, paid Supercharging, retail merchandise and vehicle insurance revenue.

Revenues related to repair and maintenance services are recognized over time as services are provided and extended service plans are recognized over the performance period of the service contract as the obligation represents a stand-ready obligation to the customer. We sell used vehicles, services, service plans, vehicle components and merchandise separately and thus use standalone selling prices as the basis for revenue allocation to the extent that these items are sold in transactions with other performance obligations. Payment for used vehicles, services, and merchandise are typically received at the point when control transfers to the customer or in accordance with payment terms customary to the business. Payments received for prepaid plans are refundable upon customer cancellation of the related contracts and are included within Customer deposits on the consolidated balance sheets. Deferred revenue related to services and other revenue was immaterial as of December 31, 2022 and 2021.

Energy Generation and Storage Segment

Energy Generation and Storage Sales

Energy generation and storage sales revenue consists of the sale of solar energy systems and energy storage systems to residential, small commercial, large commercial and utility grade customers. Sales of solar energy systems to residential and small scale commercial customers consist of the engineering, design and installation of the system. Residential and small scale commercial customers pay the full purchase price of the solar energy system upfront. Revenue for the design and installation obligation is recognized when control transfers, which is when we install a solar energy system and the system passes inspection by the utility or the authority having jurisdiction. Sales of energy storage systems to residential and small scale commercial customers consist of the installation of the energy storage system and revenue is recognized when control transfers, which is when the product has been delivered or, if we are performing installation, when installed and commissioned. Payment for such storage systems is made upon invoice or in accordance with payment terms customary to the business.

For large commercial and utility grade solar energy system and energy storage system sales which consist of the engineering, design and installation of the system, customers make milestone payments that are consistent with contract-specific phases of a project. Revenue from such contracts is recognized over time using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs for energy storage system sales and as a percentage of total estimated labor hours for solar energy system sales.

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

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

We record as deferred revenue any non-refundable amounts that are collected from customers related to fees charged for prepayments, which is recognized as revenue ratably over the respective customer contract term. As of December 31, 2022 and 2021, deferred revenue related to such customer payments amounted to \$863 million and \$399 million, respectively, mainly due to milestone payments. Revenue recognized from the deferred revenue balance as of December 31, 2021 and 2020 was \$171 million and \$93 million for the years ended December 31, 2022 and 2021, respectively. We have elected the practical expedient to omit disclosure of the amount of the transaction price allocated to remaining performance obligations for energy generation and storage sales with an original expected contract length of one year or less and the amount that we have the right to invoice when that amount corresponds directly with the value of the performance to date. As of December 31, 2022, 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 \$210 million. Of this amount, we expect to recognize \$12 million in the next 12 months and the remaining over a period up to 25 years.

We have been providing loans for financing our energy generation products during the year ended December 31, 2022. We have recorded net financing receivables on the consolidated balance sheets, of which \$24 million is recorded within Accounts receivable, net, for the current portion and \$387 million is recorded within Other non-current assets for the long-term portion, as of December 31, 2022.

Energy Generation and Storage Leasing

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

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

We record as deferred revenue any amounts that are collected from customers, including lease prepayments, in excess of revenue recognized, which is recognized as revenue ratably over the respective customer contract term. As of December 31, 2022 and 2021, deferred revenue related to such customer payments amounted to \$191 million and \$198 million, respectively. Deferred revenue also includes the portion of rebates and incentives received from utility companies and various local and state government agencies, which is recognized as revenue over the lease term. As of December 31, 2022 and 2021, deferred revenue from rebates and incentives amounted to \$25 million and \$27 million, respectively.

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

Cost of Revenues

Automotive Segment

Automotive Sales

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

Automotive Leasing

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

Services and Other

Costs of services and other revenue includes costs associated with providing non-warranty after-sales services and parts, costs of paid Supercharging, cost of used vehicles including refurbishment costs, costs for retail merchandise, and costs to provide vehicle insurance.

Energy Generation and Storage Segment

Energy Generation and Storage

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

Research and Development Costs

Research and development costs are expensed as incurred.

Income Taxes

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

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

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

Comprehensive Income

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

Stock-Based Compensation

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

For performance-based awards, stock-based compensation expense is recognized over the expected performance achievement period of individual performance milestones when the achievement of each individual performance milestone becomes probable.

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

Noncontrolling Interests and Redeemable Noncontrolling Interests

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

Net Income per Share of Common Stock Attributable to Common Stockholders

Basic net income per share of common stock attributable to common stockholders is calculated by dividing net income attributable to common stockholders by the weighted-average shares of common stock outstanding for the period. 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 per share of common stock attributable to common stockholders when their effect is dilutive.

Furthermore, in connection with the offerings of our convertible senior notes, we entered into convertible note hedges and warrants (see Note 11, *Debt*). However, our convertible note hedges are not included when calculating potentially dilutive shares since their effect is always anti-dilutive. The strike price on the warrants were below our average share price during the period and were included in the tables below. Warrants are included in the weighted-average shares used in computing basic net income per share of common stock in the period(s) they are settled.

The following table presents the reconciliation of net income attributable to common stockholders to net income used in computing basic and diluted net income per share of common stock (in millions):

	Year Ended December 31,		
	2022	2021	2020
Net income attributable to common stockholders	\$ 12,556	\$ 5,519	\$ 721
Less: Buy-out of noncontrolling interest	(27)	(5)	31
Net income used in computing basic net income per share of common stock	12,583	5,524	690
Less: Dilutive convertible debt	(1)	(9)	—
Net income used in computing diluted net income per share of common stock	\$ 12,584	\$ 5,533	\$ 690

The following table presents the reconciliation of basic to diluted weighted average shares used in computing net income per share of common stock attributable to common stockholders, as adjusted to give effect to the 2022 Stock Split (in millions):

	Year Ended December 31,		
	2022	2021	2020
Weighted average shares used in computing net income per share of common stock, basic	3,130	2,959	2,798
Add:			
Stock-based awards	310	292	198
Convertible senior notes	3	29	141
Warrants	32	106	112
Weighted average shares used in computing net income per share of common stock, diluted	3,475	3,386	3,249

The following table presents the potentially dilutive shares that were excluded from the computation of diluted net income per share of common stock attributable to common stockholders, because their effect was anti-dilutive, as adjusted to give effect to the 2022 Stock Split (in millions):

	Year Ended December 31,		
	2022	2021	2020
Stock-based awards	4	1	6
Convertible senior notes (1)	—	—	3

- (1) Under the modified retrospective method of adoption of ASU 2020-06, the dilutive impact of convertible senior notes was calculated using the if-converted method for the years ended December 31, 2022 and 2021. Certain convertible senior notes were calculated using the treasury stock method for the year ended December 31, 2020.

Business Combinations

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

Cash and Cash Equivalents

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

Restricted Cash

We maintain certain cash balances restricted as to withdrawal or use. Our restricted cash is comprised primarily of cash held to service certain payments under various secured debt facilities. In addition, restricted cash includes cash held as collateral for certain permits as well as sales to lease partners with a resale value guarantee, letters of credit, real estate leases, deposits held for our insurance services and certain operating leases. We record restricted cash as other assets in the consolidated balance sheets and determine current or non-current classification based on the expected duration of the restriction.

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

	December 31, 2022	December 31, 2021	December 31, 2020
Cash and cash equivalents	\$ 16,253	\$ 17,576	\$ 19,384
Restricted cash included in prepaid expenses and other current assets	294	345	238
Restricted cash included in other non-current assets	377	223	279
Total as presented in the consolidated statements of cash flows	<u>\$ 16,924</u>	<u>\$ 18,144</u>	<u>\$ 19,901</u>

Investments

Investments may be comprised of a combination of marketable securities, including U.S. government securities, corporate debt securities, time deposit, and certain certificates of deposit, which are all designated as available-for-sale and reported at estimated fair value, with unrealized gains and losses recorded in accumulated other comprehensive income which is included within stockholders' equity. Available-for-sale marketable securities with maturities greater than three months at the date of purchase are included in short-term investments in our consolidated balance sheets. Interest, dividends, amortization and accretion of purchase premiums and discounts on these investments are included within Interest income in our consolidated statements of operations.

The cost of available-for-sale investments sold is based on the specific identification method. Realized gains and losses on the sale of available-for-sale investments are recorded in Other (expense) income, net.

We regularly review all of our investments for declines in fair value. The review includes but is not limited to (i) the consideration of the cause of the decline, (ii) any currently recorded expected credit losses and (iii) the creditworthiness of the respective security issuers. The amortized cost basis of our investments approximates its fair value.

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 and government rebates already passed through to customers. We provide an allowance against accounts receivable for the amount we expect to be uncollectible. We write-off accounts receivable against the allowance when they are deemed uncollectible.

Depending on the day of the week on which the end of a fiscal quarter falls, our accounts receivable balance may fluctuate as we are waiting for certain customer payments to clear through our banking institutions and receipts of payments from our financing partners, which can take up to approximately two weeks based on the contractual payment terms with such partners. Our accounts receivable balances associated with our sales of regulatory credits, which are typically transferred to other manufacturers during the last few days of the quarter, is dependent on contractual payment terms. Additionally, government rebates can take up to a year or more to be collected depending on the customary processing timelines of the specific jurisdictions issuing them. These various factors may have a significant impact on our accounts receivable balance from period to period. As of December 31, 2022 and December 31, 2021, we had \$753 million and \$627 million, respectively, of long-term government rebates receivable in Other non-current assets in our consolidated balance sheets.

Financing Receivables

We provide financing options to our customers for our automotive and energy products. Financing receivables are carried at amortized cost, net of allowance for loan losses. Provisions for loan losses are charged to operations in amounts sufficient to maintain the allowance for loan losses at levels considered adequate to cover expected credit losses on the financing receivables. 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.

When originating consumer receivables, we review the credit application, the proposed contract terms, credit bureau information (e.g., FICO score) and other information. Our evaluation emphasizes the applicant's ability to pay and creditworthiness focusing on payment, affordability, and applicant credit history as key considerations. Generally, all customers in this portfolio have strong creditworthiness at loan origination.

After origination, we review the credit quality of retail financing based on customer payment activity and aging analysis. For all financing receivables, we define "past due" as any payment, including principal and interest, which is at least 31 days past the contractual due date. As of December 31, 2022, the majority of our financing receivables were at current status with only an immaterial balance being past due. Additionally, as of December 31, 2022, the majority of our financing receivables, excluding MyPower notes receivable, were originated in 2022.

We have customer notes receivable under the legacy MyPower loan program, which provided residential customers with the option to finance the purchase of a solar energy system through a 30-year loan and were all originated prior to year 2018. The outstanding balances, net of any allowance for expected credit losses, are presented on the consolidated balance sheets 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. As of December 31, 2022 and 2021, the total outstanding balance of MyPower customer notes receivable, net of allowance for expected credit losses, was \$280 million and \$299 million, respectively, of which \$7 million and \$11 million were due in the next 12 months as of December 31, 2022 and 2021, respectively. As of December 31, 2022 and 2021, the allowance for expected credit losses was \$37 million and \$41 million, respectively.

Concentration of Risk

Credit Risk

Financial instruments that potentially subject us to a concentration of credit risk consist of cash, cash equivalents, investments, restricted cash, accounts receivable and other finance receivables. Our cash and investments balances are primarily on deposit at high credit quality financial institutions or invested in money market funds. These deposits are typically in excess of insured limits. As of December 31, 2022 and December 31, 2021, no entity represented 10% or more of our total receivables balance.

Supply Risk

We are dependent on our suppliers, including 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.

Inventory Valuation

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

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

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

Operating Lease Vehicles

Vehicles that are leased as part of our direct vehicle leasing program are classified as operating lease vehicles at cost less accumulated depreciation. We generally depreciate their cost, less residual value, using the straight-line-method to cost of automotive leasing revenue over the contractual period. The gross cost of operating lease vehicles as of December 31, 2022 and December 31, 2021 was \$6.08 billion and \$5.28 billion, respectively. Operating lease vehicles on the consolidated balance sheets are presented net of accumulated depreciation of \$1.04 billion and \$773 million as of December 31, 2022 and December 31, 2021, respectively.

Digital Assets, Net

We currently account for all digital assets held as indefinite-lived intangible assets in accordance with ASC 350, *Intangibles—Goodwill and Other*. We have ownership of and control over our digital assets and we may use third-party custodial services to secure it. The digital assets are initially recorded at cost and are subsequently remeasured on the consolidated balance sheet at cost, net of any impairment losses incurred since acquisition.

We determine the fair value of our digital assets on a nonrecurring basis in accordance with ASC 820, *Fair Value Measurement* (“ASC 820”), based on quoted prices on the active exchange(s) that we have determined is the principal market for such assets (Level I inputs). We perform an analysis each quarter to identify whether events or changes in circumstances, principally decreases in the quoted prices on active exchanges, indicate that it is more likely than not that our digital assets are impaired. In determining if an impairment has occurred, we consider the lowest market price of one unit of digital asset quoted on the active exchange since acquiring the digital asset. When the then current carrying value of a digital asset exceeds the fair value determined each quarter, an impairment loss has occurred with respect to those digital assets in the amount equal to the difference between their carrying values and the prices determined.

Impairment losses are recognized within Restructuring and other in the consolidated statements of operations in the period in which the impairment is identified. Gains are not recorded until realized upon sale(s), at which point they are presented net of any impairment losses for the same digital assets held within Restructuring and other. In determining the gain to be recognized upon sale, we calculate the difference between the sales price and carrying value of the digital assets sold immediately prior to sale.

See Note 3, *Digital Assets, Net*, for further information regarding digital assets.

Solar Energy Systems, Net

We are the lessor of solar energy systems. Solar energy systems are stated at cost less accumulated depreciation.

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

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

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

Property, Plant and Equipment, Net

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

Machinery, equipment, vehicles and office furniture	3 to 15 years
Tooling	4 to 7 years
Building and building improvements	15 to 30 years
Computer equipment and software	3 to 10 years

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

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

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

Long-Lived Assets Including Acquired Intangible Assets

We review our property, plant and equipment, solar energy systems, long-term prepayments and intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset (or asset group) may not be recoverable. We measure recoverability by comparing the carrying amount to the future undiscounted cash flows that the asset is expected to generate. If the asset is not recoverable, its carrying amount would be adjusted down to its fair value. For the years ended December 31, 2022, 2021 and 2020, we have recognized no material impairments of our long-lived assets.

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

Goodwill

We assess goodwill for impairment annually in the fourth quarter, or more frequently if events or changes in circumstances indicate that it might be impaired, by comparing its carrying value to the reporting unit's fair value. For the years ended December 31, 2022, 2021, and 2020, we did not recognize any impairment of goodwill.

Capitalization of Software Costs

We capitalize costs incurred in the development of internal use software, during the application development stage to Property, plant and equipment, net on the consolidated balance sheets. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Such costs are amortized on a straight-line basis over its estimated useful life of three years.

Software development costs incurred in development of software to be sold, leased, or otherwise marketed, incurred subsequent to the establishment of technological feasibility and prior to the general availability of the software are capitalized when they are expected to become significant. Such costs are amortized over the estimated useful life of the applicable software once it is made generally available to our customers.

We evaluate the useful lives of these assets on an annual basis, and we test for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets. For the years ended December 31, 2022, 2021, and 2020, we have recognized no impairments of capitalized software costs.

Foreign Currency

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

Foreign currency transaction gains and losses are a result of the effect of exchange rate changes on transactions denominated in currencies other than the functional currency. Transaction gains and losses are recognized in Other (expense) income, net, in the consolidated statements of operations. For the years ended December 31, 2022, 2021 and 2020, we recorded a net foreign currency transaction loss of \$89 million, gain of \$97 million and loss of \$114 million, respectively.

Warranties

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

	Year Ended December 31,		
	2022	2021	2020
Accrued warranty—beginning of period	\$ 2,101	\$ 1,468	\$ 1,089
Warranty costs incurred	(803)	(525)	(312)
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact	522	102	66
Provision for warranty	1,685	1,056	625
Accrued warranty—end of period	<u>\$ 3,505</u>	<u>\$ 2,101</u>	<u>\$ 1,468</u>

Customer Deposits

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

Government Assistance Programs and Incentives

Globally, the operation of our business is impacted by various government programs, incentives, and other arrangements. Government incentives are recorded in our consolidated financial statements in accordance with their purpose as a reduction of expense, or an offset to the related capital asset. The benefit is generally recorded when all conditions attached to the incentive have been met or are expected to be met and there is reasonable assurance of their receipt. The government incentives received by us are immaterial in all periods presented since the adoption of ASU 2021-10.

Gigafactory New York—New York State Investment and Lease

We have a lease through the Research Foundation for the SUNY Foundation with respect to Gigafactory New York. Under the lease and a related research and development agreement, we are continuing to designate further buildouts at the facility. We are required to comply with certain covenants, including hiring and cumulative investment targets. Under the terms of the arrangement, the SUNY Foundation paid for a majority of the construction costs related to the manufacturing facility and the acquisition and commissioning of certain manufacturing equipment; and we are responsible for any construction or equipment costs in excess of such amount (refer to Note 15, *Commitments and Contingencies*). This incentive reduces the related lease costs of the facility within the Energy generation and storage cost of revenues and operating expense line items in our consolidated statements of operations.

Gigafactory Shanghai—Land Use Rights and Economic Benefits

We have an agreement with the local government of Shanghai for land use rights at Gigafactory Shanghai. Under the terms of the arrangement, we are required to meet a cumulative capital expenditure target and an annual tax revenue target starting at the end of 2023. In addition, the Shanghai government has granted to our Gigafactory Shanghai subsidiary certain incentives to be used in connection with eligible capital investments at Gigafactory Shanghai (refer to Note 15, *Commitments and Contingencies*). For the years ended December 31, 2022 and 2021, we received grant funding of \$76 million and \$6 million, respectively. These incentives offset the related costs of our facilities and are recorded as a reduction of the cost of the capital investment within the Property, plant and equipment, net line item in our consolidated balance sheets. The incentive therefore reduces the depreciation expense over the useful lives of the related equipment.

Nevada Tax Incentives

In connection with the construction of Gigafactory Nevada, we entered into agreements with the State of Nevada and Storey County in Nevada that provide abatements for specified taxes, discounts to the base tariff energy rates and transferable tax credits of up to \$195 million in consideration of capital investment and hiring targets that were met at Gigafactory Nevada.

Gigafactory Texas Tax Incentives

In connection with the construction of Gigafactory Texas, we entered into a 20-year agreement with Travis County in Texas pursuant to which we would receive grant funding equal to 70-80% of property taxes paid by us to Travis County and a separate 10-year agreement with the Del Valle Independent School District in Texas pursuant to which a portion of the taxable value of our property would be capped at a specified amount, in each case subject to our meeting certain minimum economic development metrics through our construction and operations at Gigafactory Texas. This incentive is recorded as a reduction of the related expenses within the Cost of automotive revenues and operating expense line items of our consolidated statements of operations.

Defined Contribution Plan

We have a 401(k) savings plan in the U.S. that is intended to qualify as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code and a number of savings plans internationally. Under the 401(k) savings plan, participating employees may elect to contribute up to 90% of their eligible compensation, subject to certain limitations. Beginning in January 2022, we began to match 50% of each employee's contributions up to a maximum of 6% (capped at \$3,000) of the employee's eligible compensation, vested upon one year of service. We recognized \$91 million of expenses related to employer contributions for the 401(k) savings plan during the year ended December 31, 2022.

Recent Accounting Pronouncements

Recently issued accounting pronouncements not yet adopted

In October 2021, the Financial Accounting Standards Board ("FASB") issued ASU No. 2021-08, Accounting for Contract Assets and Contract Liabilities from Contracts with Customers (Topic 805). This ASU requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities (deferred revenue) from acquired contracts using the revenue recognition guidance in Topic 606. At the acquisition date, the acquirer applies the revenue model as if it had originated the acquired contracts. The ASU is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. Adoption of the ASU should be applied prospectively. Early adoption is also permitted, including adoption in an interim period. If early adopted, the amendments are applied retrospectively to all business combinations for which the acquisition date occurred during the fiscal year of adoption. This ASU is currently not expected to have a material impact on our consolidated financial statements.

In March 2022, the FASB issued ASU 2022-02, Troubled Debt Restructurings and Vintage Disclosures. This ASU eliminates the accounting guidance for troubled debt restructurings by creditors that have adopted ASU 2016-13, Measurement of Credit Losses on Financial Instruments, which we adopted on January 1, 2020. This ASU also enhances the disclosure requirements for certain loan refinancing and restructurings by creditors when a borrower is experiencing financial difficulty. In addition, the ASU amends the guidance on vintage disclosures to require entities to disclose current period gross write-offs by year of origination for financing receivables and net investments in leases within the scope of ASC 326-20. The ASU is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. Adoption of the ASU would be applied prospectively. Early adoption is also permitted, including adoption in an interim period. This ASU is currently not expected to have a material impact on our consolidated financial statements.

On August 16, 2022, the IRA was enacted into law and is effective for taxable years beginning after December 31, 2022. The IRA includes multiple incentives to promote clean energy, electric vehicles, battery and energy storage manufacture or purchase, in addition to a new corporate alternative minimum tax of 15% on adjusted financial statement income of corporations with profits greater than \$1 billion. These measures may materially affect our consolidated financial statements, and we will continue to evaluate the applicability and effect of the IRA as more guidance is issued.

Recently adopted accounting pronouncements

In December 2022, the FASB issued ASU No. 2022-06, Deferral of the Sunset Date of Reference Rate Reform (Topic 848). Topic 848 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 deferred the sunset date of Topic 848 from December 31, 2022 to December 31, 2024. The ASU is effective as of December 21, 2022 through December 31, 2024. We continue to 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. We adopted ASU 2022-06 during 2022. The ASU has not and is currently not expected to have a material impact on our consolidated financial statements.

In November 2021, the FASB issued ASU No. 2021-10, Government Assistance (Topic 832). This ASU requires business entities to disclose information about government assistance they receive if the transactions were accounted for by analogy to either a grant or a contribution accounting model. The disclosure requirements include the nature of the transaction and the related accounting policy used, the line items on the balance sheets and statements of operations that are affected and the amounts applicable to each financial statement line item and the significant terms and conditions of the transactions. The ASU is effective for annual periods beginning after December 15, 2021. The disclosure requirements can be applied either retrospectively or prospectively to all transactions in the scope of the amendments that are reflected in the financial statements at the date of initial application and new transactions that are entered into after the date of initial application. We adopted the ASU prospectively on January 1, 2022. Adoption of this ASU did not have a material impact on our consolidated financial statements.

ASU 2020-06

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

On January 1, 2021, we adopted the ASU using the modified retrospective method. We recognized a cumulative effect of initially applying the ASU as an adjustment to the January 1, 2021 opening balance of accumulated deficit. Due to the recombination of the equity conversion component of our convertible debt remaining outstanding, additional paid in capital and convertible senior notes (mezzanine equity) were reduced. The removal of the remaining debt discounts recorded for this previous separation had the effect of increasing our net debt balance and the reduction of property, plant and equipment was related to previously capitalized interest. The prior period consolidated financial statements have not been retrospectively adjusted and continue to be reported under the accounting standards in effect for those periods.

Accordingly, the cumulative effect of the changes made on our January 1, 2021 consolidated balance sheet for the adoption of the ASU was as follows (in millions):

	Balances at December 31, 2020	Adjustments from Adoption of ASU 2020- 06	Balances at January 1, 2021
Assets			
Property, plant and equipment, net	\$ 12,747	\$ (45)	\$ 12,702
Liabilities			
Current portion of debt and finance leases	2,132	50	2,182
Debt and finance leases, net of current portion	9,556	219	9,775
Mezzanine equity			
Convertible senior notes	51	(51)	—
Equity			
Additional paid-in capital	27,260	(474)	26,786
Accumulated deficit	(5,399)	211	(5,188)

Note 3 - Digital Assets, Net

During the years ended December 31, 2022 and 2021, we purchased and/or received an immaterial amount and \$1.50 billion, respectively, of digital assets. As of December 31, 2022, we have converted approximately 75% of our purchases into fiat currency. During the years ended December 31, 2022 and 2021, we recorded \$204 million and \$101 million of impairment losses on such digital assets, respectively. During the years ended December 31, 2022 and 2021, we realized gains of \$64 million and \$128 million, respectively, in connection with converting our holdings of digital assets into fiat currency. The gains are presented net of impairment losses in Restructuring and other in the consolidated statements of operations. As of December 31, 2022 and 2021, the carrying value of our digital assets held was \$184 million and \$1.26 billion, which reflects cumulative impairments of \$204 million and \$101 million, each period, respectively. The fair market value of such digital assets held as of December 31, 2022 and 2021 was \$191 million and \$1.99 billion, respectively.

Note 4 - Goodwill and Intangible Assets

Goodwill decreased \$6 million within the automotive segment from \$200 million as of December 31, 2021 to \$194 million as of December 31, 2022. There were no accumulated impairment losses as of December 31, 2022 and 2021.

The net carrying value of our intangible assets decreased from \$257 million as of December 31, 2021 to \$215 million as of December 31, 2022 mainly from amortization.

Note 5 - Fair Value of Financial Instruments

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

	December 31, 2022				December 31, 2021			
	Fair Value	Level I	Level II	Level III	Fair Value	Level I	Level II	Level III
Money market funds	\$ 2,188	\$ 2,188	\$ —	\$ —	\$ 9,548	\$ 9,548	\$ —	\$ —
U.S. government securities	894	—	894	—	—	—	—	—
Corporate debt securities	885	—	885	—	131	—	131	—
Certificates of deposit and time deposits	4,253	—	4,253	—	—	—	—	—
Interest rate swap liabilities	—	—	—	—	31	—	31	—
Total	<u>\$ 8,220</u>	<u>\$ 2,188</u>	<u>\$ 6,032</u>	<u>\$ —</u>	<u>\$ 9,710</u>	<u>\$ 9,548</u>	<u>\$ 162</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 U.S. government securities, certificates of deposit, time deposits and corporate debt securities are classified within Level II of the fair value hierarchy and the market approach was used to determine fair value of these investments. 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.

Our cash, cash equivalents and investments classified by security type as of December 31, 2022 and 2021 consisted of the following (in millions):

	December 31, 2022					
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments
Cash	\$ 13,965	\$ —	\$ —	\$ 13,965	\$ 13,965	\$ —
Money market funds	2,188	—	—	2,188	2,188	—
U.S. government securities	897	—	(3)	894	—	894
Corporate debt securities	907	—	(22)	885	—	885
Certificates of deposit and time deposits	4,252	1	—	4,253	100	4,153
Total cash, cash equivalents and short-term investments	<u>\$ 22,209</u>	<u>\$ 1</u>	<u>\$ (25)</u>	<u>\$ 22,185</u>	<u>\$ 16,253</u>	<u>\$ 5,932</u>

	December 31, 2021					
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments
Cash	\$ 8,028	\$ —	\$ —	\$ 8,028	\$ 8,028	\$ —
Money market funds	9,548	—	—	9,548	9,548	—
Corporate debt securities	132	—	(1)	131	—	131
Total cash, cash equivalents and short-term investments	<u>\$ 17,708</u>	<u>\$ —</u>	<u>\$ (1)</u>	<u>\$ 17,707</u>	<u>\$ 17,576</u>	<u>\$ 131</u>

We record gross realized gains, losses and credit losses as a component of Other (expense) income, net in the consolidated statements of operations. For the years ended December 31, 2022 and 2021, we did not recognize any material gross realized gains, losses or credit losses. The ending allowance balances for credit losses were immaterial as of December 31, 2022 and December 31, 2021. We have determined that the gross unrealized losses on our investments as of December 31, 2022 and December 31, 2021 were temporary in nature.

The following table summarizes the fair value of our investments by stated contractual maturities as of December 31, 2022 (in millions):

Due in 1 year or less	\$ 5,135
Due in 1 year through 5 years	636
Due in 5 years through 10 years	161
Total	<u>\$ 5,932</u>

Disclosure of Fair Values

Our financial instruments that are not re-measured at fair value include accounts receivable, financing receivables, accounts payable, accrued liabilities, customer deposits and debt. The carrying values of these financial instruments approximate their fair values, other than our 2.375% Convertible Senior Notes due in 2022 ("2022 Notes") and 2.00% Convertible Senior Notes due in 2024 ("2024 Notes") (collectively referred to as "Convertible Senior Notes" below).

We estimate the fair value of the Convertible Senior Notes using commonly accepted valuation methodologies and market-based risk measurements that are indirectly observable, such as credit risk (Level II). The following table presents the estimated fair values and the carrying values (in millions):

	December 31, 2022		December 31, 2021	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Convertible Senior Notes (1)	\$ 37	\$ 223	\$ 119	\$ 2,016

(1) The 2022 Notes were fully settled in the first quarter of 2022.

Note 6 - Inventory

Our inventory consisted of the following (in millions):

	December 31, 2022	December 31, 2021
Raw materials	\$ 6,137	\$ 2,816
Work in process	2,385	1,089
Finished goods (1)	3,475	1,277
Service parts	842	575
Total	\$ 12,839	\$ 5,757

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

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

We write-down inventory for any excess or obsolete inventories or when we believe that the net realizable value of inventories is less than the carrying value. During the years ended December 31, 2022, 2021 and 2020 we recorded write-downs of \$144 million, \$106 million and \$145 million, respectively, in Cost of revenues in the consolidated statements of operations.

Note 7 - Solar Energy Systems, Net

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

	December 31, 2022	December 31, 2021
Solar energy systems in service	\$ 6,785	\$ 6,809
Initial direct costs related to customer solar energy system lease acquisition costs	104	104
	6,889	6,913
Less: accumulated depreciation and amortization (1)	(1,418)	(1,187)
	5,471	5,726
Solar energy systems under construction	2	18
Solar energy systems pending interconnection	16	21
Solar energy systems, net (2)	\$ 5,489	\$ 5,765

- (1) Depreciation and amortization expense during the years ended December 31, 2022, 2021 and 2020 was \$235 million, \$236 million and \$232 million, respectively.
- (2) As of December 31, 2022 and 2021, there were \$802 million and \$1.02 billion, respectively, of gross solar energy systems under lease pass-through fund arrangements with accumulated depreciation of \$148 million and \$165 million, respectively.

Note 8 - Property, Plant and Equipment, Net

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

	December 31, 2022	December 31, 2021
Machinery, equipment, vehicles and office furniture	\$ 13,558	\$ 9,953
Tooling	2,579	2,188
Leasehold improvements	2,366	1,826
Land and buildings	7,751	4,675
Computer equipment, hardware and software	2,072	1,414
Construction in progress	4,263	5,559
	32,589	25,615
Less: Accumulated depreciation	(9,041)	(6,731)
Total	\$ 23,548	\$ 18,884

Construction in progress is primarily comprised of construction of Gigafactory Texas and Gigafactory Berlin-Brandenburg, and equipment and tooling related to the manufacturing of our products. Completed assets are transferred to their respective asset classes and depreciation begins when an asset is ready for its intended use. Interest on outstanding debt is capitalized during periods of significant capital asset construction and amortized over the useful lives of the related assets. During the years ended December 31, 2022, 2021 and 2020, we capitalized interest of an immaterial amount, \$53 million and \$48 million, respectively.

Depreciation expense during the years ended December 31, 2022, 2021 and 2020 was \$2.42 billion, \$1.91 billion and \$1.57 billion, 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, we account for their production equipment as leased assets when production commences. We account for each lease and any non-lease components associated with that lease as a single lease component for all asset classes, except production equipment classes embedded in supply agreements. This results in us recording the cost of their production equipment within Property, plant and equipment, net, on the consolidated balance sheets with a corresponding liability recorded to debt and finance leases. Depreciation on Panasonic production equipment is computed using the units-of-production method whereby capitalized costs are amortized over the total estimated productive life of the respective assets. As of December 31, 2022 and 2021, we had cumulatively capitalized gross costs of \$2.01 billion and \$1.98 billion, respectively, on the consolidated balance sheets in relation to the production equipment under our Panasonic arrangement.

Note 9 - Accrued Liabilities and Other

Our accrued liabilities and other current liabilities consisted of the following (in millions):

	December 31, 2022	December 31, 2021
Accrued purchases (1)	\$ 2,747	\$ 2,045
Taxes payable (2)	1,235	1,122
Payroll and related costs	1,026	906
Accrued warranty reserve, current portion	1,025	703
Sales return reserve, current portion	270	265
Operating lease liabilities, current portion	485	368
Other current liabilities	354	310
Total	<u>\$ 7,142</u>	<u>\$ 5,719</u>

- (1) Accrued purchases primarily reflects receipts of goods and services for which we had not yet been invoiced. As we are invoiced for these goods and services, this balance will reduce and accounts payable will increase. For the year ended December 31, 2022, accrued purchases increased as we continued construction and expansion of our facilities and operations.
- (2) Taxes payable includes value added tax, sales tax, property tax, use tax and income tax payables.

Note 10 - Other Long-Term Liabilities

Our other long-term liabilities consisted of the following (in millions):

	December 31, 2022	December 31, 2021
Operating lease liabilities	\$ 2,164	\$ 1,671
Accrued warranty reserve	2,480	1,398
Sales return reserve	51	133
Deferred tax liability	82	24
Other non-current liabilities	553	320
Total other long-term liabilities	<u>\$ 5,330</u>	<u>\$ 3,546</u>

Note 11 - Debt

The following is a summary of our debt and finance leases as of December 31, 2022 (in millions):

	Net Carrying Value		Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term				
Recourse debt:						
2024 Notes	\$ —	\$ 37	\$ 37	\$ —	2.00 %	May 2024
Credit Agreement	—	—	—	2,266	Not applicable	July 2023
Solar Bonds	—	7	7	—	4.70-5.75 %	March 2025 - January 2031
Total recourse debt	—	44	44	2,266		
Non-recourse debt:						
Automotive Asset-backed Notes	984	613	1,603	—	0.36-4.64 %	December 2023-September 2025
Solar Asset-backed Notes	4	13	17	—	4.80 %	December 2026
Cash Equity Debt	28	359	397	—	5.25-5.81 %	July 2033-January 2035
Automotive Lease-backed Credit Facilities	—	—	—	151	Not applicable	September 2024
Total non-recourse debt	1,016	985	2,017	151		
Total debt	1,016	1,029	\$ 2,061	\$ 2,417		
Finance leases	486	568				
Total debt and finance leases	\$ 1,502	\$ 1,597				

The following is a summary of our debt and finance leases as of December 31, 2021 (in millions):

	Net Carrying Value		Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term				
Recourse debt:						
2022 Notes	\$ 29	\$ —	\$ 29	\$ —	2.375 %	March 2022
2024 Notes	1	89	91	—	2.00 %	May 2024
Credit Agreement	—	1,250	1,250	920	3.25 %	July 2023
Solar Bonds	0	7	7	—	4.00-5.75 %	January 2022-January 2031
Total recourse debt	30	1,346	1,377	920		
Non-recourse debt:						
Automotive Asset-backed Notes	1,007	1,706	2,723	—	0.12-5.48 %	September 2022-September 2025
Solar Asset and Loan-backed Notes	27	800	844	—	2.87-7.74 %	September 2024-September 2049
Cash Equity Debt	24	388	422	—	5.25-5.81 %	July 2033-January 2035
Automotive Lease-backed Credit Facilities	—	—	—	167	Not applicable	September 2023
Other Loans	—	14	14	21	5.10 %	February 2033
Total non-recourse debt	1,058	2,908	4,003	188		
Total debt	1,088	4,254	\$ 5,380	\$ 1,108		
Finance leases	501	991				
Total debt and finance leases	\$ 1,589	\$ 5,245				

- (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, except certain specified conditions prior to draw-down, including pledging to our lenders sufficient amounts of qualified receivables, inventories, leased vehicles and our interests in those leases or various other assets and as may be described below.

Recourse debt refers to debt that is recourse to our general assets. Non-recourse debt refers to debt that is recourse to only assets of our subsidiaries. The differences between the unpaid principal balances and the net carrying values are due to debt discounts or deferred financing costs. As of December 31, 2022, we were in material compliance with all financial debt covenants.

2022 Notes, Bond Hedges and Warrant Transactions

During the first quarter of 2022, the remaining \$29 million in aggregate principal amount of the 2022 Notes was converted and settled in cash for their par amount, and 1.2 million shares of our common stock were issued for the applicable conversion premium, as adjusted to give effect to the 2022 Stock Split. The note hedges we entered into in connection with the issuance of the 2022 Notes were automatically settled with the respective conversions of the 2022 Notes, resulting in the receipt of 1.2 million shares of our common stock during the same period, as adjusted to give effect to the 2022 Stock Split. Additionally, during the year ended December 31, 2022, we fully settled the warrants entered into in connection with the issuance of the 2022 Notes, resulting in the issuance of 37.0 million shares of our common stock, as adjusted to give effect to the 2022 Stock Split.

2024 Notes, Bond Hedges and Warrant Transactions

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

As adjusted to give effect to the 2022 Stock Split, each \$1,000 of principal of the 2024 Notes is now convertible into 48.4140 shares of our common stock, which is equivalent to a conversion price of approximately \$20.66 per share, subject to adjustment upon the occurrence of specified events. Holders of the 2024 Notes may convert, at their option, on or after February 15, 2024. Further, holders of the 2024 Notes may convert, at their option, prior to February 15, 2024 only under the following circumstances: (1) during any calendar quarter commencing after September 30, 2019 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each trading day; (2) during the five-business day period after any five-consecutive trading day period in which the trading price per \$1,000 principal amount of the 2024 Notes for each trading day of such period is less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day, or (3) if specified corporate events occur. Upon conversion, the 2024 Notes will be settled in cash, shares of our common stock or a combination thereof, at our election. If a fundamental change occurs prior to the maturity date, holders of the 2024 Notes may require us to repurchase all or a portion of their 2024 Notes for cash at a repurchase price equal to 100% of the principal amount plus any accrued and unpaid interest. In addition, if specific corporate events occur prior to the maturity date, we would increase the conversion rate for a holder who elects to convert its 2024 Notes in connection with such an event in certain circumstances. Early conversion of notes which are scheduled to settle in the following quarter are classified as current in our consolidated balance sheets.

In connection with the offering of the 2024 Notes, we entered into convertible note hedge transactions whereby we had the option to purchase 89.1 million shares of our common stock at a price of approximately \$20.66 per share, as adjusted to give effect to the 2022 Stock Split. The cost of the convertible note hedge transactions was \$476 million. In addition, we sold warrants whereby the holders of the warrants had the option to purchase 89.1 million shares of our common stock at a price of approximately \$40.50 per share, as adjusted to give effect to the 2022 Stock Split. We received \$174 million in cash proceeds from the sale of these warrants. Taken together, the purchase of the convertible note hedges and the sale of the warrants were intended to effectively increase the overall conversion price from approximately \$20.66 to approximately \$40.50 per share. As these transactions meet certain accounting criteria, the convertible note hedges and warrants were recorded in stockholders' equity and were not accounted for as derivatives. The net cost incurred in connection with the convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet.

The closing price of our common stock exceeded 130% of the applicable conversion price on at least 20 of the last 30 consecutive trading days of each quarter in 2022, causing the 2024 Notes to be convertible by their holders in the subsequent quarter. During the year ended December 31, 2022, \$54 million in aggregate principal amount of the 2024 Notes was converted and settled in cash for their par amount, and 2.4 million shares of our common stock were issued for the applicable conversion premium, as adjusted to give effect to the 2022 Stock Split. The note hedges we entered into in connection with the issuance of the 2024 Notes were automatically settled with the respective conversions of the 2024 Notes, resulting in the receipt of 2.4 million shares of our common stock during the same period, as adjusted to give effect to the 2022 Stock Split. As of December 31, 2022, the if-converted value of the notes exceeds the outstanding principal amount by \$186 million.

Credit Agreement

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

In January 2023, we entered into a 5-year senior unsecured revolving credit facility (the "RCF Credit Agreement") with a syndicate of banks to replace the existing Credit Agreement, which was terminated. The RCF Credit Agreement contains two optional one-year extensions and has a total commitment of up to \$5.00 billion, which could be increased up to \$7.00 billion under certain circumstances. The underlying borrowings may be used for general corporate purposes. Borrowed funds accrue interest at a variable rate equal to: (i) for dollar-denominated loans, at our election, (a) Term SOFR (the forward-looking secured overnight financing rate) plus 0.10%, or (b) an alternate base rate; (ii) for loans denominated in pounds sterling, SONIA (the sterling overnight index average reference rate); or (iii) for loans denominated in euros, an adjusted EURIBOR (euro interbank offered rate); in each case, plus an applicable margin. The applicable margin will be based on the rating assigned to our senior, unsecured long-term indebtedness (the "Credit Rating") from time to time. The fee for undrawn amounts is variable based on the Credit Rating and is currently 0.15% per annum.

Automotive Asset-backed Notes

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

Solar Asset and Loan-backed Notes

Our subsidiaries pooled and transferred qualifying solar energy systems and the associated customer contracts, our interests in certain financing funds or certain MyPower customer notes receivable into SPEs and issued Solar Asset and Loan-backed Notes backed by these solar assets, interests to investors or MyPower customer notes receivable. The SPEs are wholly owned by us and are consolidated in the financial statements. The cash flows generated by these solar assets and notes receivable, or distributed by the underlying financing funds to certain SPEs are used to service the principal and interest payments on the Solar Asset and Loan-backed Notes and satisfy the SPEs’ expenses, and any remaining cash is distributed to us. The SPEs’ assets and cash flows are not available to our other creditors, and the creditors of the SPEs, including the Solar Asset and Loan-backed Note holders, have no recourse to our other assets. We contracted with certain SPEs to provide operations & maintenance and administrative services for the solar energy systems. As of December 31, 2022, solar assets pledged as collateral for Solar Asset and Loan-backed Notes had a carrying value of \$69 million and are included within Solar energy systems, net, on the consolidated balance sheet.

During the year ended December 31, 2022, we early repaid \$819 million in aggregate principal of the Solar Asset and Loan-backed Notes and recorded an extinguishment of debt charge of \$24 million related to the early repayments in Interest expense in the consolidated statement of operations.

Cash Equity Debt

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

Automotive Lease-backed Credit Facilities

Our subsidiaries have entered into various credit agreements for borrowings secured by our interests in certain vehicle leases. These facilities are non-recourse to our other assets.

Pledged Assets

As of December 31, 2022 and 2021, we had pledged or restricted \$2.02 billion and \$5.25 billion of our assets (consisting principally of restricted cash, receivables, inventory, solar energy systems, operating lease vehicles, property and equipment and equity interests in certain SPEs) as collateral for our outstanding debt.

Schedule of Principal Maturities of Debt

The future scheduled principal maturities of debt as of December 31, 2022 were as follows (in millions):

	Recourse debt	Non-recourse debt	Total
2023	\$ 0	\$ 1,020	\$ 1,020
2024	37	648	685
2025	4	35	39
2026	0	35	35
2027	—	25	25
Thereafter	3	254	257
Total	\$ 44	\$ 2,017	\$ 2,061

Note 12 - Leases

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

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

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

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

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

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

	December 31, 2022	December 31, 2021
Operating leases:		
Operating lease right-of-use assets	\$ 2,563	\$ 2,016
Accrued liabilities and other	\$ 485	\$ 368
Other long-term liabilities	2,164	1,671
Total operating lease liabilities	<u>\$ 2,649</u>	<u>\$ 2,039</u>
Finance leases:		
Solar energy systems, net	\$ 25	\$ 27
Property, plant and equipment, net	1,094	1,536
Total finance lease assets	<u>\$ 1,119</u>	<u>\$ 1,563</u>
Current portion of long-term debt and finance leases	\$ 486	\$ 501
Long-term debt and finance leases, net of current portion	568	991
Total finance lease liabilities	<u>\$ 1,054</u>	<u>\$ 1,492</u>

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

	Year Ended December 31,		
	2022	2021	2020
Operating lease expense:			
Operating lease expense (1)	\$ 798	\$ 627	\$ 451
Finance lease expense:			
Amortization of leased assets	\$ 493	\$ 415	\$ 348
Interest on lease liabilities	72	89	100
Total finance lease expense	<u>\$ 565</u>	<u>\$ 504</u>	<u>\$ 448</u>
Total lease expense	<u>\$ 1,363</u>	<u>\$ 1,131</u>	<u>\$ 899</u>

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

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

	December 31, 2022	December 31, 2021
Weighted-average remaining lease term:		
Operating leases	6.4 years	6.5 years
Finance leases	3.1 years	4.2 years
Weighted-average discount rate:		
Operating leases	5.3%	5.0%
Finance leases	5.7%	5.8%

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

	Year Ended December 31,		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash outflows from operating leases	\$ 754	\$ 616	\$ 456
Operating cash outflows from finance leases (interest payments)	\$ 75	\$ 89	\$ 100
Financing cash outflows from finance leases	\$ 502	\$ 439	\$ 338
Leased assets obtained in exchange for finance lease liabilities	\$ 58	\$ 486	\$ 188
Leased assets obtained in exchange for operating lease liabilities	\$ 1,059	\$ 818	\$ 553

As of December 31, 2022, the maturities of our operating and finance lease liabilities (excluding short-term leases) are as follows (in millions):

	Operating Leases	Finance Leases
2023	\$ 610	\$ 534
2024	558	387
2025	490	122
2026	383	52
2027	300	31
Thereafter	805	4
Total minimum lease payments	3,146	1,130
Less: Interest	497	76
Present value of lease obligations	2,649	1,054
Less: Current portion	485	486
Long-term portion of lease obligations	\$ 2,164	\$ 568

As of December 31, 2022, we have excluded from the table above additional operating leases that have not yet commenced with aggregate rent payments of \$901 million. These operating leases will commence between fiscal year 2023 and 2024 with lease terms of 2 years to 15 years.

Operating Lease and Sales-type Lease Receivables

We are the lessor of certain vehicle and solar energy system arrangements as described in Note 2, *Summary of Significant Accounting Policies*. As of December 31, 2022, maturities of our operating lease and sales-type lease receivables from customers for each of the next five years and thereafter were as follows (in millions):

	Operating Leases	Sales-type Leases
2023	\$ 1,212	\$ 202
2024	900	208
2025	463	192
2026	215	174
2027	194	49
Thereafter	1,697	12
Gross lease receivables	<u>\$ 4,681</u>	<u>\$ 837</u>

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

Net Investment in Sales-type Leases

Net investment in sales-type leases, which is the sum of the present value of the future contractual lease payments, is presented on the consolidated balance sheets 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. Lease receivables relating to sales-type leases are presented on the consolidated balance sheets as follows (in millions):

	December 31, 2022	December 31, 2021
Gross lease receivables	\$ 837	\$ 427
Unearned interest income	(95)	(50)
Allowance for expected credit losses	(4)	(1)
Net investment in sales-type leases	<u>\$ 738</u>	<u>\$ 376</u>

Reported as:

Prepaid expenses and other current assets	\$ 164	\$ 73
Other non-current assets	574	303
Net investment in sales-type leases	<u>\$ 738</u>	<u>\$ 376</u>

Lease Pass-Through Financing Obligation

As of December 31, 2022, we have six transactions referred to as "lease pass-through fund arrangements." Under these arrangements, our wholly owned subsidiaries finance the cost of solar energy systems with investors through arrangements contractually structured as master leases for an initial term ranging between 10 and 25 years. These solar energy systems are subject to lease or PPAs with customers with an initial term not exceeding 25 years.

Under a lease pass-through fund arrangement, the investor makes a large upfront payment to the lessor, which is one of our subsidiaries, and in some cases, subsequent periodic payments. As of December 31, 2022, the future minimum master lease payments to be received from investors, for each of the next five years and thereafter, were as follows (in millions):

2023	\$ 26
2024	18
2025	27
2026	28
2027	29
Thereafter	366
Total	<u>\$ 494</u>

Note 13 - Equity Incentive Plans

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

As of December 31, 2022, 148.0 million shares were reserved and available for issuance under the 2019 Plan, as adjusted to give effect to the 2022 Stock Split.

The following table summarizes our stock option and RSU activity for the year ended December 31, 2022:

	Stock Options				RSUs	
	Number of Options (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in billions)	Number of RSUs (in thousands)	Weighted-Average Grant Date Fair Value
Beginning of period (1)	357,120	\$ 28.15			34,312	\$ 88.23
Granted	4,120	\$ 226.53			8,714	\$ 239.85
Exercised or released	(7,971)	\$ 27.96			(17,702)	\$ 61.74
Cancelled	(9,705)	\$ 24.25			(3,991)	\$ 140.68
End of period	<u>343,564</u>	\$ 30.65	5.19	\$ 32.79	<u>21,333</u>	\$ 162.32
Vested and expected to vest, December 31, 2022	343,105	\$ 30.61	5.19	\$ 32.75	21,323	\$ 162.33
Exercisable and vested, December 31, 2022 (2)	304,862	\$ 25.68	5.08	\$ 29.93		

(1) Prior period results have been adjusted to give effect to the 2022 Stock Split. See Note 1, *Overview*, for details.

(2) Tranche 12 of the 2018 CEO Performance Award, which represents 25.3 million stock options, was achieved in the fourth quarter of 2022 and will vest upon expected certification following the filing of this Annual Report on Form 10-K.

The weighted-average grant date fair value of RSUs granted in the years ended December 31, 2022, 2021 and 2020 was \$239.85, \$261.33 and \$100.17, respectively, as adjusted to give effect to the 2022 Stock Split. The aggregate release date fair value of RSUs in the years ended December 31, 2022, 2021 and 2020 was \$4.32 billion, \$5.70 billion and \$3.25 billion, respectively.

The aggregate intrinsic value of options exercised in the years ended December 31, 2022, 2021, and 2020 was \$1.90 billion, \$26.88 billion and \$1.55 billion, respectively. During the year ended December 31, 2021, our CEO exercised all of the remaining vested options from the 2012 CEO Performance Award, which amounted to an intrinsic value of \$23.45 billion.

ESPP

Our employees are eligible to purchase our common stock through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. The purchase price would be 85% of the lower of the fair market value on the first and last trading days of each six-month offering period. During the years ended December 31, 2022, 2021 and 2020, under the ESPP we issued 1.4 million, 1.5 million and 5.5 million shares, respectively, as adjusted to give effect to the 2022 Stock Split. As of December 31, 2022, there were 99.9 million shares available for issuance under the ESPP, as adjusted to give effect to the 2022 Stock Split.

Fair Value Assumptions

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

	Year Ended December 31,		
	2022	2021	2020
Risk-free interest rate	3.11 %	0.66 %	0.26 %
Expected term (in years)	4.1	4.3	3.9
Expected volatility	63 %	59 %	69 %
Dividend yield	0.0 %	0.0 %	0.0 %
Grant date fair value per share (1)	\$ 114.51	\$ 128.02	\$ 72.05

(1) Prior period results have been adjusted to give effect to the 2022 Stock Split. See Note 1, *Overview*, for details.

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

2018 CEO Performance Award

In March 2018, our stockholders approved the Board of Directors' grant of 304.0 million stock option awards, as adjusted to give effect to the 2020 Stock Split and the 2022 Stock Split, 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 began at \$100.0 billion for the first tranche and increases by increments of \$50.0 billion thereafter (based on both a six calendar month trailing average and a 30 calendar day trailing average, counting only trading days), has been achieved, and (ii) any one of the following eight operational milestones focused on total revenue or any one of the eight operational milestones focused on Adjusted EBITDA have been achieved for the four consecutive fiscal quarters on an annualized basis and subsequently reported by us in our consolidated financial statements filed with our Forms 10-Q and/or 10-K. 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 \$23.34 per share as adjusted to give effect to the 2020 Stock Split and the 2022 Stock Split, our CEO must hold shares that he acquires for five years post-exercise, other than a cashless exercise where shares are simultaneously sold to pay for the exercise price and any required tax withholding.

The achievement status of the operational milestones as of December 31, 2022 is provided below. Although an operational milestone is deemed achieved in the last quarter of the relevant annualized period, it may be certified only after the financial statements supporting its achievement have been filed with our Forms 10-Q and/or 10-K.

Total Annualized Revenue			Annualized Adjusted EBITDA		
Milestone (in billions)		Achievement Status	Milestone (in billions)		Achievement Status
\$ 20.0		Achieved	\$ 1.5		Achieved
\$ 35.0		Achieved	\$ 3.0		Achieved
\$ 55.0		Achieved	\$ 4.5		Achieved
\$ 75.0		Achieved (1)	\$ 6.0		Achieved
\$ 100.0		-	\$ 8.0		Achieved
\$ 125.0		-	\$ 10.0		Achieved
\$ 150.0		-	\$ 12.0		Achieved
\$ 175.0		-	\$ 14.0		Achieved

(1) Achieved in the fourth quarter of 2022 and expected to be certified following the filing of this Annual Report on Form 10-K.

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 statements of operations. In each quarter since the grant of the 2018 CEO Performance Award, we have recognized expense, generally on a pro-rated basis, for only the number of tranches (up to the maximum of 12 tranches) that corresponds to the number of operational milestones that have been achieved or have been determined probable of being achieved in the future, in accordance with the following principles.

On the grant date, a Monte Carlo simulation was used to determine for each tranche (i) a fixed amount of expense for such tranche and (ii) the future time when the market capitalization milestone for such tranche was expected to be achieved, or its “expected market capitalization milestone achievement time.” Separately, based on a subjective assessment of our future financial performance, each quarter we determine whether it is probable that we will achieve each operational milestone that has not previously been achieved or deemed probable of achievement and if so, the future time when we expect to achieve that operational milestone, or its “expected operational milestone achievement time.”

During the first quarter of 2022, three operational milestones were achieved and consequently, we recognized an aggregate catch-up expense of \$11 million.

As of December 31, 2022, all remaining unrecognized stock-based compensation expense under the 2018 CEO Performance Award has been recognized. For the years ended December 31, 2022, 2021 and 2020, we recorded stock-based compensation expense of \$66 million, \$910 million and \$838 million, respectively, related to the 2018 CEO Performance Award.

Other Performance-Based Grants

2021 Performance-Based Stock Option & RSU Awards

During the fourth quarter of 2021, the Compensation Committee of our Board of Directors granted to certain employees performance-based RSUs and stock options to purchase an aggregate 2.2 million shares of our common stock, as adjusted to give effect to the 2022 Stock Split. We begin recording stock-based compensation expense when the performance milestones become probable of achievement. Following achievement, vesting occurs over a two-year period with continued employment. As of December 31, 2022, we had unrecognized stock-based compensation expense of \$204 million, which will be recognized over a weighted-average period of 3.2 years. For the year ended December 31, 2022, we recorded \$159 million of stock-based compensation expense related to this grant, net of forfeitures.

Summary Stock-Based Compensation Information

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

	Year Ended December 31,		
	2022	2021	2020
Cost of revenues	\$ 594	\$ 421	\$ 281
Research and development	536	448	346
Selling, general and administrative	430	1,252	1,107
Total	<u>\$ 1,560</u>	<u>\$ 2,121</u>	<u>\$ 1,734</u>

Our income tax benefits recognized from stock-based compensation arrangements in each of the periods presented were immaterial due to cumulative losses and valuation allowances. During the years ended December 31, 2022, 2021 and 2020, stock-based compensation expense capitalized to our consolidated balance sheets was \$245 million, \$182 million and \$89 million, respectively. As of December 31, 2022, we had \$3.94 billion of total unrecognized stock-based compensation expense related to non-performance awards, which will be recognized over a weighted-average period of 2.26 years.

Note 14 - Income Taxes

A provision for income taxes of \$1.13 billion, \$699 million and \$292 million has been recognized for the years ended December 31, 2022, 2021 and 2020, respectively, related primarily to our subsidiaries located outside of the U.S. Our income before provision for income taxes for the years ended December 31, 2022, 2021 and 2020 was as follows (in millions):

	Year Ended December 31,		
	2022	2021	2020
Domestic	\$ 5,524	\$ (130)	\$ (198)
Noncontrolling interest and redeemable noncontrolling interest	31	125	141
Foreign	8,164	6,348	1,211
Income before income taxes	<u>\$ 13,719</u>	<u>\$ 6,343</u>	<u>\$ 1,154</u>

The components of the provision for income taxes for the years ended December 31, 2022, 2021 and 2020 consisted of the following (in millions):

	Year Ended December 31,		
	2022	2021	2020
Current:			
Federal	\$ —	\$ —	\$ —
State	62	9	4
Foreign	1,266	839	248
Total current	<u>1,328</u>	<u>848</u>	<u>252</u>
Deferred:			
Federal	26	—	—
State	1	—	—
Foreign	(223)	(149)	40
Total deferred	<u>(196)</u>	<u>(149)</u>	<u>40</u>
Total provision for income taxes	<u>\$ 1,132</u>	<u>\$ 699</u>	<u>\$ 292</u>

Deferred tax assets (liabilities) as of December 31, 2022 and 2021 consisted of the following (in millions):

	December 31, 2022	December 31, 2021
Deferred tax assets:		
Net operating loss carry-forwards	\$ 4,486	\$ 7,607
Research and development credits	1,184	923
Other tax credits and attributes	217	335
Deferred revenue	751	546
Inventory and warranty reserves	819	377
Stock-based compensation	185	115
Operating lease right-of-use liabilities	554	430
Capitalized research and development costs	693	—
Deferred GILTI tax assets	466	556
Accruals and others	178	191
Total deferred tax assets	<u>9,533</u>	<u>11,080</u>
Valuation allowance	(7,349)	(9,074)
Deferred tax assets, net of valuation allowance	<u>2,184</u>	<u>2,006</u>
Deferred tax liabilities:		
Depreciation and amortization	(1,178)	(1,279)
Investment in certain financing funds	(238)	(209)
Operating lease right-of-use assets	(506)	(391)
Deferred revenue	—	(49)
Other	(15)	(13)
Total deferred tax liabilities	<u>(1,937)</u>	<u>(1,941)</u>
Deferred tax assets (liabilities), net of valuation allowance	<u>\$ 247</u>	<u>\$ 65</u>

As of December 31, 2022, we recorded a valuation allowance of \$7.35 billion for the portion of the deferred tax asset that we do not expect to be realized. The valuation allowance on our net deferred taxes decreased by \$1.73 billion in the year ended December 31, 2022, and increased by \$6.14 billion and \$974 million during the years ended December 31, 2021 and 2020, respectively. The changes in valuation allowance are primarily due to changes in U.S. deferred tax assets and liabilities incurred in the respective year. The decrease in the year ended December 31, 2022 included utilization of \$13.57 billion net operating loss carry forwards to offset our 2022 U.S. taxable income. We have \$532 million of deferred tax assets in foreign jurisdictions, which management believes are more-likely-than-not to be realized given the expectation of future earnings in these jurisdictions. We did not have any material releases of valuation allowance for the years ended December 31, 2022, 2021 and 2020. We continue to monitor the realizability of the U.S. deferred tax assets taking into account multiple factors. In completing this assessment, we considered both objective and subjective factors. These factors included, but were not limited to, a history of losses in prior years, excess tax benefits related to stock-based compensation, future reversal of existing temporary differences and tax planning strategies. After evaluating all available evidence, we intend to continue maintaining a full valuation allowance on our U.S. deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. Given the improvement in our operating results and depending on the amount of stock-based compensation tax deductions available in the future, we may release the valuation allowance associated with the U.S. deferred tax assets in the next few years. Release of all, or a portion, of the valuation allowance would result in the recognition of certain deferred tax assets and a decrease to income tax expense for the period the release is recorded.

The reconciliation of taxes at the federal statutory rate to our provision for income taxes for the years ended December 31, 2022, 2021 and 2020 was as follows (in millions):

	Year Ended December 31,		
	2022	2021	2020
Tax at statutory federal rate	\$ 2,881	\$ 1,332	\$ 242
State tax, net of federal benefit	51	6	4
Nondeductible executive compensations	14	201	184
Other nondeductible expenses	89	67	52
Excess tax benefits related to stock based compensation	(745)	(7,123)	(666)
Foreign income rate differential	(923)	(668)	33
U.S. tax credits	(276)	(328)	(181)
Noncontrolling interests and redeemable noncontrolling interests adjustment	42	11	5
GILTI inclusion	1,279	1,008	133
Unrecognized tax benefits	252	28	1
Change in valuation allowance	(1,532)	6,165	485
Provision for income taxes	<u>\$ 1,132</u>	<u>\$ 699</u>	<u>\$ 292</u>

As of December 31, 2022, we had \$18.0 billion of federal and \$14.0 billion of state net operating loss carry-forwards available to offset future taxable income, some of which, if not utilized, will begin to expire in 2023 for federal and state purposes. A portion of these losses were generated by our acquisition of SolarCity Corporation (“SolarCity”) and some of the other companies we acquired, and therefore are subject to change of control provisions, which limit the amount of acquired tax attributes that can be utilized in a given tax year. We do not expect the change of control limitations or expiration dates to significantly impact our ability to utilize these attributes.

As of December 31, 2022, we had research and development tax credits of \$969 million and \$734 million for federal and state income tax purposes, respectively. If not utilized, the federal research and development tax credits will expire in various amounts beginning in 2024. However, the state of California research and development tax credits can be carried forward indefinitely. In addition, we have other general business tax credits of \$197 million for federal income tax purposes, which will not begin to significantly expire until 2033.

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

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

As of December 31, 2022, we intend to indefinitely reinvest our foreign earnings and cash unless such repatriation results in no or minimal tax costs. We have recorded the taxes associated with the earnings we intend to repatriate in the future. For the earnings we intend to indefinitely reinvest, no deferred tax liabilities for foreign withholding or other taxes have been recorded. The estimated amount of such unrecognized deferred tax liability associated with the indefinitely reinvested earnings is approximately \$168 million.

Uncertain Tax Positions

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

December 31, 2019	\$	273
Increases in balances related to prior year tax positions		66
Increases in balances related to current year tax positions		41
December 31, 2020		380
Increases in balances related to prior year tax positions		117
Decreases in balances related to prior year tax positions		(90)
Increases in balances related to current year tax positions		124
December 31, 2021		531
Increases in balances related to prior year tax positions		136
Decreases in balances related to prior year tax positions		(12)
Increases in balances related to current year tax positions		222
Decreases in balances related to expiration of the statute of limitations		(7)
December 31, 2022	\$	870

As of December 31, 2022, accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense and amounted to \$31 million. Unrecognized tax benefits of \$572 million, if recognized, would not affect our effective tax rate since the tax benefits would increase a deferred tax asset that is currently fully offset by a valuation allowance.

We file income tax returns in the U.S. and various state and foreign jurisdictions. We are currently under examination by the Internal Revenue Service ("IRS") for the years 2015 to 2018. Additional tax years within the periods 2004 to 2014 and 2019 to 2021 remain subject to examination for federal income tax purposes. All net operating losses and tax credits generated to date are subject to adjustment for U.S. federal and state income tax purposes. Our returns for 2004 and subsequent tax years remain subject to examination in U.S. state and foreign jurisdictions.

Given the uncertainty in timing and outcome of our tax examinations, an estimate of the range of the reasonably possible change in gross unrecognized tax benefits within twelve months cannot be made at this time.

Note 15 - Commitments and Contingencies

Operating Lease Arrangement in Buffalo, New York

We have an operating lease through the Research Foundation for the SUNY Foundation with respect to Gigafactory New York. Under the lease and a related research and development agreement, we are continuing to further develop the facility.

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

In 2021, an amendment was executed to extend our overall agreement to spend or incur \$5.00 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York through December 31, 2029. On February 1, 2022, we reported to the State of New York that we had met and exceeded our annual requirements for jobs and investment in Buffalo and New York State. As of December 31, 2022, we are currently in excess of such targets relating to investments and personnel in the State of New York and Buffalo and do not currently expect any issues meeting our applicable obligations in the years beyond. 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 be required to make 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 have been constructing Gigafactory Shanghai. Under the terms of the arrangement, we are required to spend RMB 14.08 billion in capital expenditures by the end of 2023 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 expect to meet the capital expenditure and tax revenue requirements based on our current level of spend and sales.

Legal Proceedings

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 22, 2020, all of the director defendants except Elon Musk reached a settlement to resolve the lawsuit against them for an amount to be paid entirely under the applicable insurance policy. The settlement, which does not involve an admission of any wrongdoing by any party, was approved by the Court on August 17, 2020. Tesla received payment of approximately \$43 million on September 16, 2020, which has been recognized in our consolidated statements of operations as a reduction to Selling, general and administrative operating expenses for costs previously incurred related to the acquisition of SolarCity. On February 4, 2020, the Court issued a ruling that denied plaintiffs' previously-filed motion for summary judgment and granted in part and denied in part defendants' previously-filed motion for summary judgment. The case was set for trial in March 2020 until it was postponed by the Court due to safety precautions concerning COVID-19. The trial was held from July 12 to July 23, 2021 and on August 16, 2021. On October 22, 2021, the Court approved the parties' joint stipulation that (a) the class is decertified and the action shall continue exclusively as a derivative action under Court of Chancery Rule 23.1 and (b) the direct claims against Elon Musk are dismissed with prejudice. Following post-trial briefing, post-trial argument was held on January 18, 2022.

On April 27, 2022, the Court entered judgment in favor of Mr. Musk on all counts. On May 26, 2022, the plaintiff filed a notice of appeal. The parties have completed briefing and argument will be held before the Supreme Court of Delaware on March 29, 2023.

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.

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 awarded to Elon Musk in 2018. 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. Defendants' answer was filed on December 3, 2019.

On January 25, 2021, the Court conditionally certified certain claims and a class of Tesla stockholders as a class action. On September 30, 2021, plaintiff filed a motion for leave to file a verified amended derivative complaint. On October 1, 2021, defendants Kimbal Musk and Steve Jurvetson moved for summary judgment as to the claims against them. Following the motion, plaintiff agreed to voluntarily dismiss the claims against Kimbal Musk and Steve Jurvetson. Plaintiff also moved for summary judgment on October 1, 2021. On October 27, 2021, the Court approved the parties' joint stipulation that, among other things, (a) all claims against Kimbal Musk and Steve Jurvetson in the Complaint are dismissed with prejudice; (b) the class is decertified and the action shall continue exclusively as a derivative action under Court of Chancery Rule 23.1; and (c) the direct claims against the remaining defendants are dismissed with prejudice. On November 18, 2021, the remaining defendants (a) moved for partial summary judgment, (b) opposed plaintiff's summary judgment motion and (c) opposed the plaintiff's motion to amend his complaint. In January 2022, the case was assigned to a different judge. On February 24, 2022, the court (i) granted plaintiff's motion to amend his complaint, and (ii) canceled oral argument on the summary judgment motions, stating that the court is "skeptical that this litigation can be resolved based on the undisputed facts" and the "case is going to trial," but that the "parties may reassert their arguments made in support of summary judgment in their pre-trial and post-trial briefs." Trial was held November 14-18, 2022. Post-trial briefing is underway and post-trial argument is scheduled for February 21, 2023.

Litigation Related to Directors' Compensation

On June 17, 2020, a purported Tesla stockholder filed a derivative action in the Delaware Court of Chancery, purportedly on behalf of Tesla, against certain of Tesla's current and former directors regarding compensation awards granted to Tesla's directors, other than Elon Musk, between 2017 and 2020. The suit asserts claims for breach of fiduciary duty and unjust enrichment and seeks declaratory and injunctive relief, unspecified damages and other relief. Defendants filed their answer on September 17, 2020. Trial is currently set for November 27, 2023, to December 1, 2023.

Litigation Relating to Potential Going Private Transaction

Between August 10, 2018 and September 6, 2018, nine purported stockholder class actions were filed against Tesla and Elon Musk in connection with Mr. Musk's August 7, 2018 Twitter post that he was considering taking Tesla private. All of the suits are now pending in the U.S. District Court for the Northern District of California. Although the complaints vary in certain respects, they each purport to assert claims for violations of federal securities laws related to Mr. Musk's statement and seek unspecified compensatory damages and other relief on behalf of a purported class of purchasers of Tesla's securities. Plaintiffs filed their consolidated complaint on January 16, 2019 and added as defendants the members of Tesla's board of directors. The now-consolidated purported stockholder class action was stayed while the issue of selection of lead counsel was briefed and argued before the Ninth Circuit. The Ninth Circuit ruled regarding lead counsel. Defendants filed a motion to dismiss the complaint on November 22, 2019. The hearing on the motion was held on March 6, 2020. On April 15, 2020, the Court denied defendants' motion to dismiss. The parties stipulated to certification of a class of stockholders, which the court granted on November 25, 2020. On January 11, 2022, plaintiff filed a motion for partial summary judgment. On April 1, 2022, the Court granted in part plaintiffs' motion for partial summary judgment. The Company disagrees with the ruling and accordingly, on April 22, 2022, asked the Court for reconsideration or, in the alternative, certification to file an interlocutory appeal. On June 16, 2022, in response to Tesla's motions, the Court denied certification to appeal and declined to reconsider its opinion but clarified its summary judgment ruling to make clear that it had not ruled that any misstatements it identified met the required materiality element under the securities statute. The issue of materiality and reliance will both be questions for the jury to decide at trial, which started on January 17, 2023.

Between October 17, 2018 and March 8, 2021, seven derivative lawsuits were filed in the Delaware Court of Chancery, purportedly on behalf of Tesla, against Mr. Musk and the members of Tesla's board of directors, as constituted at relevant times, in relation to statements made and actions connected to a potential going private transaction, with certain of the lawsuits challenging additional Twitter posts by Mr. Musk, among other things. Five of those actions were consolidated, and all seven actions have been stayed pending resolution of the above-referenced consolidated purported stockholder class action. In addition to these cases, two derivative lawsuits were filed on October 25, 2018 and February 11, 2019 in the U.S. District Court for the District of Delaware, purportedly on behalf of Tesla, against Mr. Musk and the members of the Tesla board of directors as then constituted. Those cases have also been consolidated and stayed pending resolution of the above-referenced consolidated purported stockholder class action.

On October 21, 2022, a lawsuit was filed in the Delaware Court of Chancery by a purported shareholder of Tesla alleging, among other things, that board members breached their fiduciary duties in connection with their oversight of the Company's 2018 settlement with the SEC, as amended. Among other things, the plaintiff seeks reforms to the Company's corporate governance and internal procedures, unspecified damages, and attorneys' fees. The parties reached an agreement to stay the case until March 7, 2023.

Unless otherwise stated, the individual defendants named in the stockholder proceedings described above and the Company with respect to the stockholder class action proceedings described above believe that the claims in such proceedings have no merit and intend to defend against them vigorously. We are unable to reasonably estimate the possible loss or range of loss, if any, associated with these claims.

On November 15, 2021, JPMorgan Chase Bank ("JP Morgan") filed a lawsuit against Tesla in the Southern District of New York alleging breach of a stock warrant agreement that was entered into as part of a convertible notes offering in 2014. In 2018, JP Morgan informed Tesla that it had adjusted the strike price based upon Mr. Musk's August 7, 2018 Twitter post that he was considering taking Tesla private. Tesla disputed JP Morgan's adjustment as a violation of the parties' agreement. In 2021, Tesla delivered shares to JP Morgan per the agreement, which they duly accepted. JP Morgan now alleges that it is owed approximately \$162 million as the value of additional shares that it claims should have been delivered as a result of the adjustment to the strike price in 2018. On January 24, 2022, Tesla filed multiple counterclaims as part of its answer to the underlying lawsuit, asserting among other points that JP Morgan should have terminated the stock warrant agreement in 2018 rather than make an adjustment to the strike price that it should have known would lead to a commercially unreasonable result. Tesla believes that the adjustments made by JP Morgan were neither proper nor commercially reasonable, as required under the stock warrant agreements. JP Morgan filed a motion for judgment on the pleadings, which Tesla opposed, and that motion is currently pending before the Court.

Litigation and Investigations Relating to Alleged Discrimination and Harassment

On October 4, 2021, in a case captioned *Diaz v. Tesla*, a jury in the Northern District of California returned a verdict of \$136.9 million against Tesla on claims by a former contingent worker that he was subjected to race discrimination while assigned to work at Tesla's Fremont Factory from 2015-2016. On November 16, 2021, Tesla filed a post-trial motion for relief that included a request for a new trial or reduction of the jury's damages. The Court held a hearing on Tesla's motion on January 19, 2022. On April 13, 2022, the Court granted Tesla's motion in part, reducing the total damages to \$15 million and conditionally denied the motion for a new trial subject to the plaintiff's acceptance of the reduced award. On June 21, 2022, the plaintiff rejected the reduced award and, as a result, on June 27, 2022, the Court ordered a new trial on damages only, to commence on March 27, 2023. Tesla continues to believe that the facts and law do not justify the damages awarded and is assessing its next steps.

On February 9, 2022, shortly after the *Diaz* jury verdict, the California Civil Rights Department ("CRD," formerly "DFEH") filed a civil complaint against Tesla in Alameda County, California Superior Court, alleging systemic race discrimination, hostile work environment and pay equity claims, among others. CRD's amended complaint seeks monetary damages and injunctive relief. On September 22, 2022, Tesla filed a cross complaint against CRD, alleging that it violated the Administrative Procedures Act by failing to follow statutory pre-requisites prior to filing suit and that cross complaint was subject to a sustained demurrer. Tesla has until February 3, 2023 to amend its cross complaint. The case is now in discovery.

Additionally, on June 1, 2022 the Equal Employment Opportunity Commission ("EEOC") issued a cause finding against Tesla that closely parallels the CRD's allegations. Tesla is in the process of setting up a mandatory mediation with the EEOC.

On June 16, 2022, two Tesla stockholders filed separate derivative actions in the U.S. District Court for the Western District of Texas, purportedly on behalf of Tesla, against certain of Tesla's current and former directors. Both suits assert claims for breach of fiduciary duty, unjust enrichment, and violation of the federal securities laws in connection with alleged race and gender discrimination and sexual harassment. Among other things, plaintiffs seek declaratory and injunctive relief, unspecified damages payable to Tesla, and attorneys' fees. On July 22, 2022, the Court consolidated the two cases and on September 6, 2022, plaintiffs filed a consolidated complaint. On November 7, 2022, the defendants filed a motion to dismiss the case. Plaintiffs filed a response of January 13, 2023, and the defendants' reply is due February 17, 2023.

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, including subpoenas, formal and informal requests and other investigations and inquiries.

For example, the SEC had issued subpoenas to Tesla in connection with Elon Musk's prior statement that he was considering taking Tesla private. 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. The SEC also has periodically issued subpoenas to us seeking information on our governance processes around compliance with the SEC settlement, as amended.

Separately, the company has received requests from the DOJ for documents related to Tesla's Autopilot and FSD features. To our knowledge no government agency in any ongoing investigation has concluded that any wrongdoing occurred. 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.

Letters of Credit

As of December 31, 2022, we had \$318 million of unused letters of credit outstanding.

Note 16 - 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 VIEs and we are the primary beneficiary of these VIEs by reference to the power and benefits criterion under ASC 810. 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 and the associated customer contracts to be sold or contributed to these VIEs, redeploying solar energy systems 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. Certain assets of the funds have been pledged as collateral for their obligations.

The aggregate carrying values of the VIEs' assets and liabilities, after elimination of any intercompany transactions and balances, in the consolidated balance sheets were as follows (in millions):

	December 31, 2022	December 31, 2021
Assets		
Current assets		
Cash and cash equivalents	\$ 68	\$ 87
Accounts receivable, net	22	24
Prepaid expenses and other current assets	274	152
Total current assets	364	263
Solar energy systems, net	4,060	4,515
Other non-current assets	404	276
Total assets	<u>\$ 4,828</u>	<u>\$ 5,054</u>
Liabilities		
Current liabilities		
Accrued liabilities and other	\$ 69	\$ 74
Deferred revenue	10	11
Current portion of debt and finance leases	1,013	1,031
Total current liabilities	1,092	1,116
Deferred revenue, net of current portion	149	161
Debt and finance leases, net of current portion	971	2,093
Other long-term liabilities	3	11
Total liabilities	<u>\$ 2,215</u>	<u>\$ 3,381</u>

Note 17 - Related Party Transactions

In February 2020, our CEO and a member of our Board of Directors purchased from us 195,555 and 18,750 shares, respectively, as adjusted to give effect to the 2022 Stock Split, 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 resumed our annual evaluation of all available options for providing directors' and officers' indemnity coverage, which we had suspended during the height of shelter-in-place requirements related to the COVID-19 pandemic. As part of such process, we obtained a binding market quote for a directors' and officers' liability insurance policy with an aggregate coverage limit of \$100 million.

Pursuant to the indemnification agreement, our CEO provided, from his personal funds, directors' and officers' indemnity coverage to us during the interim term in the event such coverage is not indemnifiable by us, up to a total of \$100 million. In return, we paid our CEO a total of \$3 million, which represents the market-based premium for the market quote described above as prorated for 90 days and further discounted by 50%. Following the lapse of the 90-day period, we did not extend the term of the indemnification agreement with our CEO and instead bound a customary directors' and officers' liability insurance policy with third-party carriers.

In relation to our CEO's exercise of stock options and sale of common stock from the 2012 CEO Performance Award, Tesla withheld the appropriate amount of taxes. However, given the significant amounts involved, our CEO entered into an indemnification agreement with us in November 2021 for additional taxes owed, if any.

Tesla periodically does business with certain entities with which its CEO and directors are affiliated, such as SpaceX and Twitter, Inc., in accordance with our Related Person Transactions Policy. Such transactions have not had to date, and are not currently expected to have, a material impact on our consolidated financial statements.

Note 18 - 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 and parts, paid Supercharging, sales of used vehicles, retail merchandise and vehicle insurance revenue. The energy generation and storage segment includes the design, manufacture, installation, sales and leasing of solar energy generation and energy storage products and related services and sales of solar energy systems incentives. Our CODM does not evaluate operating segments using asset or liability information. The following table presents revenues and gross profit by reportable segment (in millions):

	Year Ended December 31,		
	2022	2021	2020
Automotive segment			
Revenues	\$ 77,553	\$ 51,034	\$ 29,542
Gross profit	\$ 20,565	\$ 13,735	\$ 6,612
Energy generation and storage segment			
Revenues	\$ 3,909	\$ 2,789	\$ 1,994
Gross profit	\$ 288	\$ (129)	\$ 18

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

	Year Ended December 31,		
	2022	2021	2020
United States	\$ 40,553	\$ 23,973	\$ 15,207
China	18,145	13,844	6,662
Other	22,764	16,006	9,667
Total	\$ 81,462	\$ 53,823	\$ 31,536

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

	December 31, 2022	December 31, 2021
United States	\$ 21,667	\$ 19,026
Germany	3,547	2,606
China	2,978	2,415
Other international	845	602
Total	\$ 29,037	\$ 24,649

The following table presents inventory by reportable segment (in millions):

	December 31,		December 31,	
	2022		2021	
Automotive	\$	10,996	\$	4,978
Energy generation and storage		1,843		779
Total	\$	<u>12,839</u>	\$	<u>5,757</u>

Note 19 - Restructuring and Other

During the years ended December 31, 2022 and 2021, we recorded \$204 million and \$101 million, respectively, of impairment losses on digital assets. During the years ended December 31, 2022 and 2021, we also realized gains of \$64 million and \$128 million, respectively, in connection with converting our holdings of digital assets into fiat currency. Additionally, we recorded other expenses of \$36 million in the second quarter during the year ended December 31, 2022.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES*Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In designing and evaluating the disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that our management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of December 31, 2022, 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 SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Our management concluded that our internal control over financial reporting was effective as of December 31, 2022.

Our independent registered public accounting firm, PricewaterhouseCoopers LLP, has audited the effectiveness of our internal control over financial reporting as of December 31, 2022, as stated in their report which is included herein.

Limitations on the Effectiveness of Controls

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

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2022, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item 10 of Form 10-K will be included in our 2023 Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2023 Annual Meeting of Stockholders and is incorporated herein by reference. The 2023 Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item 12 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required by this Item 13 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

1. Financial statements (see *Index to Consolidated Financial Statements* in Part II, Item 8 of this report)
2. All financial statement schedules have been omitted since the required information was not applicable or was not present in amounts sufficient to require submission of the schedules, or because the information required is included in the consolidated financial statements or the accompanying notes
3. The exhibits listed in the following *Index to Exhibits* are filed or incorporated by reference as part of this report

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
3.1	<u>Amended and Restated Certificate of Incorporation of the Registrant.</u>	10-K	001-34756	3.1	March 1, 2017
3.2	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant.</u>	10-K	001-34756	3.2	March 1, 2017
3.3	<u>Amended and Restated Bylaws of the Registrant.</u>	8-K	001-34756	3.2	February 1, 2017
4.1	<u>Specimen common stock certificate of the Registrant.</u>	10-K	001-34756	4.1	March 1, 2017
4.2	<u>Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	S-1	333-164593	4.2	January 29, 2010
4.3	<u>Amendment to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 20, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	S-1/A	333-164593	4.2A	May 27, 2010
4.4	<u>Amendment to Fifth Amended and Restated Investors' Rights Agreement between Registrant, Toyota Motor Corporation and certain holders of the Registrant's capital stock named therein.</u>	S-1/A	333-164593	4.2B	May 27, 2010
4.5	<u>Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of June 14, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	S-1/A	333-164593	4.2C	June 15, 2010
4.6	<u>Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of November 2, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	8-K	001-34756	4.1	November 4, 2010
4.7	<u>Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 22, 2011, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	S-1/A	333-174466	4.2E	June 2, 2011
4.8	<u>Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 30, 2011, between Registrant and certain holders of the Registrant's capital stock named therein.</u>	8-K	001-34756	4.1	June 1, 2011
4.9	<u>Sixth Amendment to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 15, 2013 among the Registrant, the Elon Musk Revocable Trust dated July 22, 2003 and certain other holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.1	May 20, 2013

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.10	<u>Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 14, 2013, between the Registrant and certain holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.2	May 20, 2013	
4.11	<u>Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of August 13, 2015, between the Registrant and certain holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.1	August 19, 2015	
4.12	<u>Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 18, 2016, between the Registrant and certain holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.1	May 24, 2016	
4.13	<u>Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of March 15, 2017, between the Registrant and certain holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.1	March 17, 2017	
4.14	<u>Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 1, 2019, between the Registrant and certain holders of the capital stock of the Registrant named therein.</u>	8-K	001-34756	4.1	May 3, 2019	
4.15	<u>Indenture, dated as of May 22, 2013, by and between the Registrant and U.S. Bank National Association.</u>	8-K	001-34756	4.1	May 22, 2013	
4.16	<u>Fourth Supplemental Indenture, dated as of March 22, 2017, by and between the Registrant and U.S. Bank National Association.</u>	8-K	001-34756	4.2	March 22, 2017	
4.17	<u>Form of 2.375% Convertible Senior Note Due March 15, 2022 (included in Exhibit 4.18).</u>	8-K	001-34756	4.2	March 22, 2017	
4.18	<u>Fifth Supplemental Indenture, dated as of May 7, 2019, by and between Registrant and U.S. Bank National Association, related to 2.00% Convertible Senior Notes due May 15, 2024.</u>	8-K	001-34756	4.2	May 8, 2019	
4.19	<u>Form of 2.00% Convertible Senior Notes due May 15, 2024 (included in Exhibit 4.20).</u>	8-K	001-34756	4.2	May 8, 2019	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
4.20	Indenture, dated as of October 15, 2014, between SolarCity and U.S. Bank National Association, as trustee.	S-3ASR(1)	333-199321	4.1	October 15, 2014
4.21	Tenth Supplemental Indenture, dated as of March 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/6-10.	8-K(1)	001-35758	4.3	March 9, 2015
4.22	Eleventh Supplemental Indenture, dated as of March 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/7-15.	8-K(1)	001-35758	4.4	March 9, 2015
4.23	Fifteenth Supplemental Indenture, dated as of March 19, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C4-10.	8-K(1)	001-35758	4.5	March 19, 2015
4.24	Sixteenth Supplemental Indenture, dated as of March 19, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C5-15.	8-K(1)	001-35758	4.6	March 19, 2015
4.25	Twentieth Supplemental Indenture, dated as of March 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C9-10.	8-K(1)	001-35758	4.5	March 26, 2015
4.26	Twenty-First Supplemental Indenture, dated as of March 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C10-15.	8-K(1)	001-35758	4.6	March 26, 2015
4.27	Twenty-Sixth Supplemental Indenture, dated as of April 2, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C14-10.	8-K(1)	001-35758	4.5	April 2, 2015
4.28	Thirtieth Supplemental Indenture, dated as of April 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C19-10.	8-K(1)	001-35758	4.5	April 9, 2015
4.29	Thirty-First Supplemental Indenture, dated as of April 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C20-15.	8-K(1)	001-35758	4.6	April 9, 2015
4.30	Thirty-Fifth Supplemental Indenture, dated as of April 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C24-10.	8-K(1)	001-35758	4.5	April 14, 2015
4.31	Thirty-Sixth Supplemental Indenture, dated as of April 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C25-15.	8-K(1)	001-35758	4.6	April 14, 2015

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
4.32	<u>Thirty-Eighth Supplemental Indenture, dated as of April 21, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C27-10.</u>	8-K(1)	001-35758	4.3	April 21, 2015
4.33	<u>Thirty-Ninth Supplemental Indenture, dated as of April 21, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C28-15.</u>	8-K(1)	001-35758	4.4	April 21, 2015
4.34	<u>Forty-Third Supplemental Indenture, dated as of April 27, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C32-10.</u>	8-K(1)	001-35758	4.5	April 27, 2015
4.35	<u>Forty-Fourth Supplemental Indenture, dated as of April 27, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C33-15.</u>	8-K(1)	001-35758	4.6	April 27, 2015
4.36	<u>Forty-Eighth Supplemental Indenture, dated as of May 1, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/12-10.</u>	8-K(1)	001-35758	4.5	May 1, 2015
4.37	<u>Forty-Ninth Supplemental Indenture, dated as of May 1, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/13-15.</u>	8-K(1)	001-35758	4.6	May 1, 2015
4.38	<u>Fifty-Second Supplemental Indenture, dated as of May 11, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C36-10.</u>	8-K(1)	001-35758	4.4	May 11, 2015
4.39	<u>Fifty-Third Supplemental Indenture, dated as of May 11, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C37-15.</u>	8-K(1)	001-35758	4.5	May 11, 2015
4.40	<u>Fifty-Seventh Supplemental Indenture, dated as of May 18, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C40-10.</u>	8-K(1)	001-35758	4.4	May 18, 2015
4.41	<u>Fifty-Eighth Supplemental Indenture, dated as of May 18, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C41-15.</u>	8-K(1)	001-35758	4.5	May 18, 2015
4.42	<u>Sixty-First Supplemental Indenture, dated as of May 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C44-10.</u>	8-K(1)	001-35758	4.4	May 26, 2015
4.43	<u>Sixty-Second Supplemental Indenture, dated as of May 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C45-15.</u>	8-K(1)	001-35758	4.5	May 26, 2015

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.44	<u>Seventieth Supplemental Indenture, dated as of June 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C52-10.</u>	8-K(1)	001-35758	4.4	June 16, 2015	
4.45	<u>Seventy-First Supplemental Indenture, dated as of June 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C53-15.</u>	8-K(1)	001-35758	4.5	June 16, 2015	
4.46	<u>Seventy-Fourth Supplemental Indenture, dated as of June 22, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C56-10.</u>	8-K(1)	001-35758	4.4	June 23, 2015	
4.47	<u>Seventy-Fifth Supplemental Indenture, dated as of June 22, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C57-15.</u>	8-K(1)	001-35758	4.5	June 23, 2015	
4.48	<u>Eightieth Supplemental Indenture, dated as of June 29, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C61-10.</u>	8-K(1)	001-35758	4.5	June 29, 2015	
4.49	<u>Eighty-First Supplemental Indenture, dated as of June 29, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C62-15.</u>	8-K(1)	001-35758	4.6	June 29, 2015	
4.50	<u>Ninetieth Supplemental Indenture, dated as of July 20, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C71-10.</u>	8-K(1)	001-35758	4.5	July 21, 2015	
4.51	<u>Ninety-First Supplemental Indenture, dated as of July 20, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C72-15.</u>	8-K(1)	001-35758	4.6	July 21, 2015	
4.52	<u>Ninety-Fifth Supplemental Indenture, dated as of July 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/20-10.</u>	8-K(1)	001-35758	4.5	July 31, 2015	
4.53	<u>Ninety-Sixth Supplemental Indenture, dated as of July 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/21-15.</u>	8-K(1)	001-35758	4.6	July 31, 2015	
4.54	<u>One Hundred-and-Fifth Supplemental Indenture, dated as of August 10, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C81-10.</u>	8-K(1)	001-35758	4.5	August 10, 2015	
4.55	<u>One Hundred-and-Eleventh Supplemental Indenture, dated as of August 17, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C87-15.</u>	8-K(1)	001-35758	4.6	August 17, 2015	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.56	<u>One Hundred-and-Sixteenth Supplemental Indenture, dated as of August 24, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C92-15.</u>	8-K(1)	001-35758	4.6	August 24, 2015	
4.57	<u>One Hundred-and-Twenty-First Supplemental Indenture, dated as of August 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C97-15.</u>	8-K(1)	001-35758	4.6	August 31, 2015	
4.58	<u>One Hundred-and-Twenty-Eighth Supplemental Indenture, dated as of September 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C101-10.</u>	8-K(1)	001-35758	4.5	September 15, 2015	
4.59	<u>One Hundred-and-Twenty-Ninth Supplemental Indenture, dated as of September 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C102-15.</u>	8-K(1)	001-35758	4.6	September 15, 2015	
4.60	<u>One Hundred-and-Thirty-Third Supplemental Indenture, dated as of September 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C106-10.</u>	8-K(1)	001-35758	4.5	September 29, 2015	
4.61	<u>One Hundred-and-Thirty-Fourth Supplemental Indenture, dated as of September 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C107-15.</u>	8-K(1)	001-35758	4.6	September 29, 2015	
4.62	<u>One Hundred-and-Thirty-Eighth Supplemental Indenture, dated as of October 13, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C111-10.</u>	8-K(1)	001-35758	4.5	October 13, 2015	
4.63	<u>One Hundred-and-Forty-Third Supplemental Indenture, dated as of October 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/25-10.</u>	8-K(1)	001-35758	4.5	October 30, 2015	
4.64	<u>One Hundred-and-Forty-Fourth Supplemental Indenture, dated as of October 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/26-15.</u>	8-K(1)	001-35758	4.6	October 30, 2015	
4.65	<u>One Hundred-and-Forty-Eighth Supplemental Indenture, dated as of November 4, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C116-10.</u>	8-K(1)	001-35758	4.5	November 4, 2015	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.66	<u>One Hundred-and-Fifty-Third Supplemental Indenture, dated as of November 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C121-10.</u>	8-K(1)	001-35758	4.5	November 17, 2015	
4.67	<u>One Hundred-and-Fifty-Fourth Supplemental Indenture, dated as of November 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C122-15.</u>	8-K(1)	001-35758	4.6	November 17, 2015	
4.68	<u>One Hundred-and-Fifty-Eighth Supplemental Indenture, dated as of November 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C126-10.</u>	8-K(1)	001-35758	4.5	November 30, 2015	
4.69	<u>One Hundred-and-Fifty-Ninth Supplemental Indenture, dated as of November 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C127-15.</u>	8-K(1)	001-35758	4.6	November 30, 2015	
4.70	<u>One Hundred-and-Sixty-Third Supplemental Indenture, dated as of December 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C131-10.</u>	8-K(1)	001-35758	4.5	December 14, 2015	
4.71	<u>One Hundred-and-Sixty-Fourth Supplemental Indenture, dated as of December 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C132-15.</u>	8-K(1)	001-35758	4.6	December 14, 2015	
4.72	<u>One Hundred-and-Sixty-Eighth Supplemental Indenture, dated as of December 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C136-10.</u>	8-K(1)	001-35758	4.5	December 28, 2015	
4.73	<u>One Hundred-and-Sixty-Ninth Supplemental Indenture, dated as of December 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C137-15.</u>	8-K(1)	001-35758	4.6	December 28, 2015	
4.74	<u>One Hundred-and-Seventy-Third Supplemental Indenture, dated as of January 29, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2016/4-10.</u>	8-K(1)	001-35758	4.5	January 29, 2016	
4.75	<u>One Hundred-and-Seventy-Fourth Supplemental Indenture, dated as of January 29, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2016/5-15.</u>	8-K(1)	001-35758	4.6	January 29, 2016	
4.76	<u>Description of Registrant's Securities</u>	10-K	001-34756	4.119	February 13, 2020	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.1**	Form of Indemnification Agreement between the Registrant and its directors and officers.	S-1/A	333-164593	10.1	June 15, 2010	
10.2**	2003 Equity Incentive Plan.	S-1/A	333-164593	10.2	May 27, 2010	
10.3**	Form of Stock Option Agreement under 2003 Equity Incentive Plan.	S-1	333-164593	10.3	January 29, 2010	
10.4**	Amended and Restated 2010 Equity Incentive Plan.	10-K	001-34756	10.4	February 23, 2018	
10.5**	Form of Stock Option Agreement under 2010 Equity Incentive Plan.	10-K	001-34756	10.6	March 1, 2017	
10.6**	Form of Restricted Stock Unit Award Agreement under 2010 Equity Incentive Plan.	10-K	001-34756	10.7	March 1, 2017	
10.7**	Amended and Restated 2010 Employee Stock Purchase Plan, effective as of February 1, 2017.	10-K	001-34756	10.8	March 1, 2017	
10.8**	2019 Equity Incentive Plan.	S-8	333-232079	4.2	June 12, 2019	
10.9**	Form of Stock Option Agreement under 2019 Equity Incentive Plan.	S-8	333-232079	4.3	June 12, 2019	
10.10**	Form of Restricted Stock Unit Award Agreement under 2019 Equity Incentive Plan.	S-8	333-232079	4.4	June 12, 2019	
10.11**	Employee Stock Purchase Plan, effective as of June 12, 2019.	S-8	333-232079	4.5	June 12, 2019	
10.12**	2007 SolarCity Stock Plan and form of agreements used thereunder.	S-1(1)	333-184317	10.2	October 5, 2012	
10.13**	2012 SolarCity Equity Incentive Plan and form of agreements used thereunder.	S-1(1)	333-184317	10.3	October 5, 2012	
10.14**	2010 Zep Solar, Inc. Equity Incentive Plan and form of agreements used thereunder.	S-8(1)	333-192996	4.5	December 20, 2013	
10.15**	Offer Letter between the Registrant and Elon Musk dated October 13, 2008.	S-1	333-164593	10.9	January 29, 2010	
10.16**	Performance Stock Option Agreement between the Registrant and Elon Musk dated January 21, 2018.	DEF 14A	001-34756	Appendix A	February 8, 2018	
10.17**	Maxwell Technologies, Inc. 2005 Omnibus Equity Incentive Plan, as amended through May 6, 2010	8-K(2)	001-15477	10.1	May 10, 2010	
10.18**	Maxwell Technologies, Inc. 2013 Omnibus Equity Incentive Plan	DEF 14A(2)	001-15477	Appendix A	June 2, 2017	
10.19	Indemnification Agreement, effective as of June 23, 2020, between Registrant and Elon R. Musk.	10-Q	001-34756	10.4	July 28, 2020	
10.20	Indemnification Agreement, dated as of February 27, 2014, by and between the Registrant and J.P. Morgan Securities LLC.	8-K	001-34756	10.1	March 5, 2014	
10.21	Form of Call Option Confirmation relating to 1.25% Convertible Senior Notes Due March 1, 2021.	8-K	001-34756	10.3	March 5, 2014	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.22	Form of Warrant Confirmation relating to 1.25% Convertible Senior Notes Due March 1, 2021.	8-K	001-34756	10.5	March 5, 2014	
10.23	Form of Call Option Confirmation relating to 2.00% Convertible Senior Notes due May 15, 2024.	8-K	001-34756	10.1	May 3, 2019	
10.24	Form of Warrant Confirmation relating to 2.00% Convertible Senior Notes due May 15, 2024.	8-K	001-34756	10.2	May 3, 2019	
10.25	Supply Agreement between Panasonic Corporation and the Registrant dated October 5, 2011.	10-K	001-34756	10.50	February 27, 2012	
10.26	Amendment No. 1 to Supply Agreement between Panasonic Corporation and the Registrant dated October 29, 2013.	10-K	001-34756	10.35A	February 26, 2014	
10.27	Agreement between Panasonic Corporation and the Registrant dated July 31, 2014.	10-Q	001-34756	10.1	November 7, 2014	
10.28	General Terms and Conditions between Panasonic Corporation and the Registrant dated October 1, 2014.	8-K	001-34756	10.2	October 11, 2016	
10.29	Letter Agreement, dated as of February 24, 2015, regarding addition of co-party to General Terms and Conditions, Production Pricing Agreement and Investment Letter Agreement between Panasonic Corporation and the Registrant.	10-K	001-34756	10.25A	February 24, 2016	
10.30	Amendment to Gigafactory General Terms, dated March 1, 2016, by and among the Registrant, Panasonic Corporation and Panasonic Energy Corporation of North America.	8-K	001-34756	10.1	October 11, 2016	
10.31	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.	10-Q	001-34756	10.2	July 28, 2020	
10.32	Production Pricing Agreement between Panasonic Corporation and the Registrant dated October 1, 2014.	10-Q	001-34756	10.3	November 7, 2014	
10.33	Investment Letter Agreement between Panasonic Corporation and the Registrant dated October 1, 2014.	10-Q	001-34756	10.4	November 7, 2014	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.34	Amendment to Gigafactory Documents, dated April 5, 2016, by and among the Registrant, Panasonic Corporation, Panasonic Corporation of North America and Panasonic Energy Corporation of North America.	10-Q	001-34756	10.2	May 10, 2016	
10.35	2019 Pricing Agreement (Japan Cells) with respect to 2011 Supply Agreement, executed September 20, 2019, by and among the Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation and SANYO Electric Co., Ltd.	10-Q	001-34756	10.6	October 29, 2019	
10.36	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.	10-Q	001-34756	10.3	July 28, 2020	
10.37	2021 Pricing Agreement (Japan Cells) with respect to 2011 Supply Agreement, executed December 29, 2020, by and among the Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation of North America and SANYO Electric Co., Ltd.	10-K	001-34756	10.39	February 8, 2021	
10.38	Amended and Restated Factory Lease, executed as of March 26, 2019, by and between the Registrant and Panasonic Energy North America, a division of Panasonic Corporation of North America, as tenant.	10-Q	001-34756	10.3	July 29, 2019	
10.39	Lease Amendment, executed September 20, 2019, by and among the Registrant, Panasonic Corporation of North America, on behalf of its division Panasonic Energy of North America, with respect to the Amended and Restated Factory Lease, executed as of March 26, 2019.	10-Q	001-34756	10.7	October 29, 2019	
10.40	Second Lease Amendment, entered into on June 9, 2020, by and between the Registrant and Panasonic Energy of North America, a division of Panasonic Corporation of North America, with respect to the Amended and Restated Factory Lease dated January 1, 2017.	10-Q	001-34756	10.1	July 28, 2020	
10.41	Amendment and Restatement in respect of ABL Credit Agreement, dated as of March 6, 2019, by and among certain of the Registrant's and Tesla Motors Netherlands B.V.'s direct or indirect subsidiaries from time to time party thereto, as borrowers, Wells Fargo Bank, National Association, as documentation agent, JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as syndication agents, the lenders from time to time party thereto, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent.	S-4/A	333-229749	10.68	April 3, 2019	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.42	<u>First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020, in respect of the Amended and Restated ABL Credit Agreement, dated as of March 6, 2019, by and among certain of the Registrant's and Tesla Motors Netherlands B.V.'s direct or indirect subsidiaries from time to time party thereto, as borrowers, Wells Fargo Bank, National Association, as documentation agent, JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as syndication agents, the lenders from time to time party thereto, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent.</u>	10-K	001-34756	10.44	February 8, 2021	
10.43	<u>Agreement for Tax Abatement and Incentives, dated as of May 7, 2015, by and between Tesla Motors, Inc. and the State of Nevada, acting by and through the Nevada Governor's Office of Economic Development.</u>	10-Q	001-34756	10.1	August 7, 2015	
10.44	<u>Purchase Agreement, dated as of August 11, 2017, by and among the Registrant, SolarCity and Goldman Sachs & Co. LLC and Morgan Stanley & Co. LLC as representatives of the several initial purchasers named therein.</u>	8-K	001-34756	10.1	August 23, 2017	
10.45	<u>Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of September 2, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</u>	10-Q(1)	001-35758	10.16	November 6, 2014	
10.46	<u>First Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of October 31, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</u>	10-K(1)	001-35758	10.16a	February 24, 2015	
10.47	<u>Second Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of December 15, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</u>	10-K(1)	001-35758	10.16b	February 24, 2015	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.48	<u>Third Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of February 12, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</u>	10-Q(1)	001-35758	10.16c	May 6, 2015	
10.49	<u>Fourth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of March 30, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</u>	10-Q(1)	001-35758	10.16d	May 6, 2015	
10.50	<u>Fifth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of June 30, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-Q(1)	001-35758	10.16e	July 30, 2015	
10.51	<u>Sixth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of September 1, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-Q(1)	001-35758	10.16f	October 30, 2015	
10.52	<u>Seventh Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of October 9, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-Q(1)	001-35758	10.16g	October 30, 2015	
10.53	<u>Eighth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of October 26, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-Q(1)	001-35758	10.16h	October 30, 2015	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.54	<u>Ninth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of December 9, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-K(1)	001-35758	10.16i	February 10, 2016	
10.55	<u>Tenth Amendment to Amended and Restated Agreement For Research & Development Alliance on Triex Module Technology, effective as of March 31, 2017, by and between The Research Foundation For The State University of New York, on behalf of the Colleges of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</u>	10-Q	001-34756	10.8	May 10, 2017	
10.56	<u>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.</u>	10-Q	001-34756	10.6	July 28, 2020	
10.57	<u>Twelfth Amendment to Amended and Restated Agreement for Research & Development Alliance on Triex Module Technology, effective as of May 1, 2021, among the Research Foundation for the State University of New York, Silevo, LLC and Tesla Energy Operations, Inc.</u>	10-Q	001-34756	10.1	October 25, 2021	
10.58	<u>Grant Contract for State-Owned Construction Land Use Right, dated as of October 17, 2018, by and between Shanghai Planning and Land Resource Administration Bureau, as grantor, and Tesla (Shanghai) Co., Ltd., as grantee (English translation).</u>	10-Q	001-34756	10.2	July 29, 2019	
10.59	<u>Credit Agreement, dated as of January 20, 2023, among Tesla, Inc., the Lenders and Issuing Banks from time to time party thereto, Citibank, N.A., as Administrative Agent and Deutsche Bank Securities, Inc., as Syndication Agent</u>	—	—	—	—	X

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
21.1	List of Subsidiaries of the Registrant	—	—	—	—	X
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm	—	—	—	—	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	—	—	—	—	X
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)					

* Furnished herewith

** Indicates a management contract or compensatory plan or arrangement
Confidential treatment has been requested for portions of this exhibit
Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10).

(1) Indicates a filing of SolarCity

(2) Indicates a filing of Maxwell Technologies, Inc.

ITEM 16. SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Tesla, Inc.

Date: January 30, 2023

/s/ Elon Musk

Elon Musk
Chief Executive Officer
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Elon Musk</u> Elon Musk	Chief Executive Officer and Director (Principal Executive Officer)	January 30, 2023
<u>/s/ Zachary J. Kirkhorn</u> Zachary J. Kirkhorn	Chief Financial Officer (Principal Financial Officer)	January 30, 2023
<u>/s/ Vaibhav Taneja</u> Vaibhav Taneja	Chief Accounting Officer (Principal Accounting Officer)	January 30, 2023
<u>/s/ Robyn Denholm</u> Robyn Denholm	Director	January 30, 2023
<u>/s/ Ira Ehrenpreis</u> Ira Ehrenpreis	Director	January 30, 2023
<u>/s/ Joseph Gebbia</u> Joseph Gebbia	Director	January 30, 2023
<u>/s/ Hiromichi Mizuno</u> Hiromichi Mizuno	Director	January 30, 2023
<u>/s/ James Murdoch</u> James Murdoch	Director	January 30, 2023
<u>/s/ Kimbal Musk</u> Kimbal Musk	Director	January 30, 2023
<u>/s/ Kathleen Wilson-Thompson</u> Kathleen Wilson-Thompson	Director	January 30, 2023

CREDIT AGREEMENT,

dated as of

January 20, 2023,

among

TESLA, INC.,

The Lenders and Issuing Banks from time to time Party Hereto,

CITIBANK, N.A.,
as Administrative Agent

and

DEUTSCHE BANK SECURITIES INC.,
as Syndication Agent

CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC

and

WELLS FARGO SECURITIES, LLC,
as Joint Lead Arrangers and Joint Bookrunners and

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS BANK USA, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Documentation Agents

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Exhibit H	Form of Officer's Certificate for Designation of an Unrestricted Subsidiary
Exhibit I-1	Form of U.S. Tax Compliance Certificate
Exhibit I-2	Form of U.S. Tax Compliance Certificate
Exhibit I-3	Form of U.S. Tax Compliance Certificate
Exhibit I-4	Form of U.S. Tax Compliance Certificate
Exhibit J	Form of Guarantee Agreement

CREDIT AGREEMENT, dated as of January 20, 2023, among TESLA, INC., as borrower, the LENDERS and ISSUING BANKS party from time to time hereto, CITIBANK, N.A., as Administrative Agent, DEUTSCHE BANK SECURITIES INC., as Syndication Agent, CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC and WELLS FARGO SECURITIES, LLC, as Joint Lead Arrangers and Joint Bookrunners, and CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS BANK USA, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Documentation Agents.

The parties hereto agree as follows:

Article I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing denominated in Dollars refers to whether such Loan, or the Loans comprising such Borrowing, is bearing interest at a rate determined by reference to the Alternate Base Rate.

“Act” has the meaning assigned to such term in Section 9.13.

“Additional Lender” has the meaning assigned to such term in Section 2.05(d).

“Adjusted EURIBOR Rate” means, as to any Borrowing denominated in any Euros for any Interest Period, an interest rate per annum equal to (a) the EURIBOR Rate for such Interest Period, divided by (b) one, minus the Statutory Reserve Percentage.

“Adjusted Term SOFR Rate” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation, plus (b) 0.10%; provided that, if the Adjusted Term SOFR Rate as so determined shall ever be less than the Floor, then the Adjusted Term SOFR Rate shall be deemed to be the Floor for purposes of this Agreement.

“Administrative Agent” means Citibank, N.A., together with its affiliates acting in such or related capacities, as the administrative agent for the Lenders under this Agreement, together with any of its successors and assigns.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by or otherwise acceptable to the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreed Currency” means Dollars and each Foreign Currency.

“Agreement” means this Credit Agreement.

“Agreement Currency” has the meaning assigned to such term in Section 9.16(b).

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day, plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one-month tenor in effect on such day, plus 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternative rate of interest pursuant to Section 2.21 hereof, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Agreement.

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Affiliates from time to time concerning or relating to bribery or corruption, including, but not limited to, the Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010, each as amended, and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules, in each case, applicable to the Borrower or its Affiliates from time to time concerning or relating to terrorism financing or money laundering, including, but not limited to, any applicable provision of the Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Creditor” has the meaning assigned to such term in Section 9.16(b).

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment; provided that in the case of Section 2.20 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment under the Facility. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Rate” means, for any day, with respect to any Term Benchmark Loan, SONIA Loan or ABR Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth in the Pricing Grid under the caption “Term Benchmark Spread/SONIA Spread”, “ABR Spread”, or “Commitment Fee Rate”, as the case may be, based upon the ratings by Moody’s and S&P, respectively, applicable on such date to the Index Debt.

“Approved Electronic Platform” means IntraLinks, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system.

“Approved Fund” has the meaning assigned to such term in Section 9.04(b)(ii).

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, substantially in the form of Exhibit A hereto or any other form approved by the Administrative Agent.

“Augmenting Lender” has the meaning assigned to such term in Section 2.02(e).

“Authorized Officer” means, with respect to (i) delivering a Borrowing Request, an Interest Election Request and similar notices, any person or persons that has or have been authorized by the board of directors (or equivalent governing body) of the Borrower to deliver such notices pursuant to this Agreement and that has or have appropriate signature cards or certificates of incumbency on file with the Administrative Agent or the applicable Issuing Bank, (ii) delivering financial information, notices pursuant to Section 5.02 and officer’s certificates pursuant to this Agreement, the chief financial officer, the vice president of finance, the treasurer (or equivalent officer overseeing the Borrower’s global treasury function) or the principal accounting officer of the Borrower and (iii) any other matter in connection with this Agreement or any other Loan Document, any officer (or a person or persons so designated by any two officers) of the applicable Loan Party.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of (a) the Maturity Date and (b) the date of termination of all of the Commitments.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.21(d).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Basel III” means, collectively, those certain agreements on capital and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems”, “Basel III: International Framework for Liquidity Risk Measurement, Standards and

Monitoring”, and “Guidance for National Authorities Operating the Countercyclical Capital Buffer”, each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and “Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools”, as published by the Basel Committee on Banking Supervision in January 2013 (as revised from time to time).

“Benchmark” means, initially, with respect to any Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Dollars or a Foreign Currency, the applicable Relevant Rate; provided that, if a Benchmark Transition Event has occurred with respect to such Relevant Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means, with respect to such Obligations, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.21(a).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time and (b) the related Benchmark Replacement Adjustment, if any; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Agreed Currency at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark for any Agreed Currency:

- (a) in the case of clauses (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clauses (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to the then-current Benchmark for any Agreed Currency, the occurrence of one or more of the following events with respect to such Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, the central bank for the Agreed Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, with respect to any then-current Benchmark for any Agreed Currency, the period (if any) (a) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has

replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.21 and (b) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.21.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applied and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Tesla, Inc., a Delaware corporation.

“Borrowing” means Loans of the same Type, denominated in the same currency, made, converted or continued on the same date and, if applicable, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, which shall be substantially in the form of Exhibit E hereto or any other form approved by the Administrative Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York, are authorized or required by law to remain closed; provided that (i) when used in connection with Loans denominated in Pounds Sterling and the calculation or computation of SONIA, the term “Business Day” shall mean SONIA Business Day, (ii) when used in connection with any Loans denominated in Euros, the term “Business Day” shall exclude any day which is not a TARGET Day and (iii) when used in connection with any Term Benchmark Loans denominated in Dollars, such day shall also be a U.S. Government Securities Business Day.

“Calculation Date” means, with respect to any Foreign Currency, the last day of each calendar month (or, if such day is not a Business Day, the next succeeding Business Day) and any other day during the continuation of a Default that the Administrative Agent may designate as a “Calculation Date”; provided that the date of issuance of any Borrowing Request pursuant to Section 2.03 with respect to, and each date of any continuation of, any Loan denominated in a Foreign Currency, shall also be a “Calculation Date” with respect to such Foreign Currency.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or tangible personal property, or a combination thereof, which obligations are required to be classified and accounted for as financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, notwithstanding anything to the contrary contained in Section 1.04(a), any change in GAAP after

December 31, 2018 that would require obligations that would be classified and accounted for as operating leases under GAAP as existing on December 31, 2018 to be classified and accounted for as capital leases or otherwise reflected on the consolidated balance sheet of the Borrower and its Subsidiaries, such obligations shall continue to be treated as an operating leases for all purposes under this Agreement.

“Captive Insurance Subsidiary” means a Subsidiary established by the Borrower or any of its Subsidiaries for the sole purpose of insuring the business, facilities, employees, officers and/or directors of the Borrower and its Subsidiaries.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

“CFC Holdco” means any (i) Domestic Subsidiary or (ii) Foreign Subsidiary that is a “disregarded entity” for U.S. federal income tax purposes, in each case that owns (directly or indirectly) no material assets other than cash or cash accounts and equity interests (or equity interests and indebtedness), each as determined for U.S. federal income tax purposes, of one or more (a) Foreign Subsidiaries that are CFCs or (b) subsidiaries that themselves are CFC Holdcos.

“Change in Control” means the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) other than a Permitted Holder, of Equity Interests of Borrower representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rule, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Charges” has the meaning assigned to it in Section 9.20.

“Charging Agreements” means (i) electric vehicle charging station related agreements, including lease and license agreements and all associated real property and other rights provided in the applicable agreement, (ii) agreements and other rights related to customer accounts, payments and data; equipment lease agreements entered into with a customer pursuant to which such customer agrees to lease a Charging System, and all rights related thereto and (iii) agreements to provide vehicle charging related services such as equipment installation, equipment maintenance or customer billing service.

“Charging Assets” means (i) Charging Systems, (ii) Charging Agreements, (iii) Equity Interests in Excluded Charging Subsidiaries and (iv) Vehicle Environmental Attributes.

“Charging Systems” means all parts of an electric vehicle charging station, including charge posts, charging connectors, power electronics equipment, switchgear, conduit, wiring, metering equipment, concrete pads, signage, fences or visual barriers, mobile charging stations, canopies, solar panels, energy storage systems and other related equipment.

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

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans and to acquire participations in Letters of Credit hereunder as set forth on Schedule 1.01 as its “Commitment”, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, or in the documentation pursuant to which such Lender became a party hereto in accordance with Section 2.02(e), as applicable, in each case as it may be (a) reduced from time to time pursuant to Section 2.08, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04 and (c) increased from time to time pursuant to Section 2.02(e). The initial aggregate amount of the Lenders’ Commitments as of the Effective Date is USD\$5,000,000,000.

“Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR” (if applicable), the definition of “Business Day,” the definition of “SONIA Business Day,” the definition of “U.S. Government Securities Business Day”, the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.15 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated Liquidity” means, as of any date of determination, the sum of (a) the Total Available Commitments at such date, plus (b) total cash (other than restricted cash), cash equivalents and Marketable Securities of the Borrower and its Domestic Subsidiaries that are Restricted Subsidiaries as determined by the Borrower based on adjustments to the amount of total cash (other than restricted cash), cash equivalents and Marketable Securities, as reported in the Borrower’s most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, filed with SEC.

“Consolidated Net Tangible Assets” means the aggregate amount of the Borrower’s and the Restricted Subsidiaries’ consolidated assets (less applicable reserves and other properly deductible items), after deducting therefrom (i) all current liabilities and (ii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles all as set forth on the Borrower’s most recent audited consolidated balance sheet prepared in accordance with GAAP.

“Consolidated Subsidiaries” means, as of any date, all Subsidiaries of the Borrower to the extent the accounts of such Person are consolidated with the accounts of the Borrower as of such date in accordance with the principles of consolidation reflected in the audited financial statements most recently delivered in accordance with this Agreement.

“Consolidated Total Assets” means, at any time of determination thereof, the aggregate amount of all assets of the Borrower and its Consolidated Subsidiaries as set forth in the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlled” has a meaning correlative thereto.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to it in Section 9.18.

“Credit Exposure” means, with respect to any Lender at any time, the sum of such Lender’s Revolving Credit Exposure and its LC Exposure.

“Customer Lease Agreement” means a lease agreement entered into with a customer, pursuant to which such customer agrees to lease an Energy Storage System.

“Daily Simple SONIA” means, for any day (a “SONIA Rate Day”), a rate per annum equal to, for any Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to Pounds Sterling, the greater of (i) SONIA for the day (such day, a “Sterling Determination Day”) that is five (5) SONIA Business Days prior to (A) if such SONIA Rate Day is a SONIA Business Day, such SONIA Rate Day or (B) if such SONIA Rate Day is not a SONIA Business Day, the SONIA Business Day immediately preceding such SONIA Rate Day, in each case, as such SONIA is published by the SONIA Administrator on the SONIA Administrator’s Website; provided that, if by 5:00 p.m. (London time) on the second (2nd) SONIA Business Day immediately following any Sterling Determination Day, SONIA in respect of such Sterling Determination Day has not been published on the SONIA Administrator’s Website and a Benchmark Replacement Date with respect to Daily Simple SONIA has not occurred, then SONIA for such Sterling Determination Day will be SONIA as published in respect of the first (1st) preceding SONIA Business Day for which such SONIA was published on the SONIA Administrator’s Website; provided, further, that SONIA as determined pursuant to this proviso shall be utilized for purposes of calculation of Daily Simple SONIA for no more than three consecutive SONIA Rate Days and (ii) the Floor. Any change in Daily Simple SONIA due to a change in SONIA shall be effective from and including the effective date of such change in SONIA without notice to the Borrower.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans or participations in Letters of Credit required to be funded by it hereunder within three (3) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified in writing and with supporting facts) has not been satisfied, (b) notified the Borrower, the Administrative Agent or any Lender in writing, or has made a public statement to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement states that such position is based on such Lender’s good faith determination that a condition precedent to funding a loan under this Agreement cannot be met) or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after a request in writing by the Administrative Agent, any Issuing Bank or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement: provided that such Lender shall cease to be Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s, such Issuing Bank’s or Borrower’s receipt of such certification, (d) has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity) or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity), or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, (e) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in such Lender or a parent company thereof by a Governmental Authority or an instrumentality thereof; provided, further, that such ownership or interest by a Governmental Authority does not result in or provide such Lender or a parent company thereof with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Governmental Authority to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Lender or a parent company thereof or (f) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless such requirement to pay is the subject of a good faith dispute. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (f) above shall be conclusive and binding absent manifest error.

“Disclosed Matters” means the actions, suits and proceedings and, to the extent disclosed pursuant to Item 103 of Regulation S-K, the environmental proceedings, disclosed in (a) the Borrower’s Annual Report on Form 10-K for the year ended December 31, 2021, (b) all other Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and, in each case, filed by the Borrower with the SEC since January 1, 2022 and prior to the Effective Date which have been posted on the website of the SEC at www.sec.gov and (c) any other information generally made available by the Borrower to the public through the issuance of a press release or posting to the Borrower’s website since the Borrower’s most recent Quarterly Report on Form 10-Q filed by the Borrower with the SEC.

“Discretionary Guarantor” means any Domestic Subsidiary that is a Restricted Subsidiary that the Borrower, in its sole discretion elects to cause to be a Guarantor by providing a Guarantee in respect of the Obligations.

“Disqualified Institution” means, on any date, (a) any Person designated by the Borrower as a “Disqualified Institution” by written notice delivered to the Administrative Agent on or prior to the date hereof and (b) any other Person that is a reasonably identifiable competitor of the Borrower or any of its Subsidiaries, whether directly or through a controlled subsidiary or portfolio company, and, in each case, Affiliates of any such Person clearly identifiable solely on the basis of the similarity of their name; provided that “Disqualified Institutions” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent from time to time.

“Documentation Agents” means, collectively, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS BANK USA, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH and WELLS FARGO BANK, NATIONAL ASSOCIATION, in their capacities as documentation agents.

“Dollar Amount” means, at any time:

(a) with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding; and

(b) with respect to any Loan denominated in Euros or Pounds Sterling, the principal amount thereof then outstanding in such currency, converted to Dollars in accordance with Section 2.18.

“Dollars” or “USD” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“DO List” has the meaning assigned to it in Section 9.04(e)(iv).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union from time to time, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Effective Date TEO Subsidiary” means any direct or indirect subsidiary of TEO as of the Effective Date.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“EMU” means Economic and Monetary Union as contemplated in the Treaty.

“Energy Environmental Attribute” means any credit, benefit, reduction, offset or allowance (such as so-called renewable energy certificates, green tags, green certificates, and renewable energy credits), howsoever entitled or named, resulting from, attributable to or associated with the storage or generation of energy, other than the actual electric energy produced, and that is capable of being measured, verified or calculated and in any case may be lawfully marketed to third parties. By way of illustration, Energy Environmental Attributes may result from: the generation system’s use of a particular renewable energy source; avoided NOx, SOx, CO2 or greenhouse gas emissions and other carbon credits and offsets; avoided water use or as otherwise specified under any applicable energy-related private or governmental program. Notwithstanding any of the foregoing in this definition or any other provision of this Agreement, Energy Environmental Attributes shall not in any case include: (i) any of the foregoing obtained by, provided to, used by or necessary for the Borrower or any of its Restricted Subsidiaries to conduct any of its operations at any location (and shall not include any water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop any facility); or (ii) any production tax credits.

“Energy Storage Agreement” means a battery services contract, a battery sale contract, a battery installation contract, a battery dispatch contract, a market participation contract involving batteries, a shared revenue and cost avoidance contract, a capacity contract, a tolling contract, demand response contract, a software contract pertaining to the dispatch or other management of batteries, or any agreement similar to the foregoing.

“Energy Storage Assets” means Energy Storage Systems, Host Customer Agreements and Projects and Equity Interests in Excluded Energy Storage Subsidiaries.

“Energy Storage Systems” means all parts of an energy storage system, including batteries, solar panels, inverters, wiring and other electrical devices, conduit, housings, hardware, remote monitoring equipment, connectors, meters, disconnects and other related devices, including associated balance of plant.

“Environmental Attribute” means an Energy Environmental Attribute or a Vehicle Environmental Attribute.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments or injunctions issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment or the management, release or threatened release of any Hazardous Material or, to the extent relating to exposure to Hazardous Materials, human health matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of

any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, any successor statute thereto, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) or (o) of the Code.

“ERISA Event” means (a) the occurrence of any “reportable event,” as defined in Section 4043 of ERISA with respect to any Plan (other than an event for which the 30-day notice period is waived), (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) a determination that any Plan is, or is expected to be, in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (e) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (f) the incurrence by any Loan Party of any liability under Section 4975 of the Code with respect to the occurrence of a non-exempt prohibited transaction under Section 4975(c) of the Code or Section 406 of ERISA, (g) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (h) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (i) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, terminated (within the meaning of Section 4041A or 4042 of ERISA), insolvent, or in “endangered” or “critical” status (within the meaning of Sections 431 or 432 of the Code or Sections 304 or 305 of ERISA).

“Erroneous Payment” has the meaning assigned to it in Section 8.07(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 8.07(f).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“EURIBOR” means the rate per annum equal to the Euro Interbank Offered Rate as administered by the European Money Markets Institute (or any other Person that takes over the administration of such rate) for a period comparable in length to such Interest Period (the “EURIBOR Rate”), at approximately 11:00 a.m. (Brussels time) two TARGET Days prior to the commencement of such Interest Period; provided that, if such rate is not available at such time for any reason, then the “EURIBOR Rate” with respect to such Term Benchmark Borrowing for such Interest Period shall be the Interpolated Rate; provided, further, that if EURIBOR Rate as so determined shall ever be less than the Floor, then EURIBOR Rate shall be deemed to be the Floor.

“EURIBOR Rate” has the meaning assigned to it in the definition of “EURIBOR.”

“Euro” or “€” means the single currency of Participating Member States introduced in accordance with the provisions of Article 109(1)4 of the Treaty and, in respect of all payments to be made under this Agreement in Euros, means immediately available, freely transferable funds.

“Events of Default” has the meaning assigned to such term in Article VII.

“Exchange Rate” means on any day, with respect to any Foreign Currency, the rate at which such Foreign Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m., London time, on such date on the Reuters World Currency Page for such Foreign Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate with respect to such Foreign Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be selected by the Administrative Agent (with respect to which the Administrative Agent shall promptly notify the Borrower), or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such Foreign Currency are then being conducted, at or about 10:00 a.m., London time, on such date for the purchase of the relevant currency for delivery two (2) Business Days later; provided that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Charging Subsidiary” means those direct or indirect Subsidiaries of the Borrower (a) in which the Borrower owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets other than Charging Assets, (c) whose sole assets consist of Equity Interests in Excluded Charging Subsidiaries of the type described in the foregoing clause (b) or (d) created for or encumbered by transactions involving monetization of Vehicle Environmental Attributes.

“Excluded Domestic Subsidiary” means any Domestic Subsidiary that is (i) a direct or indirect Subsidiary of a Subsidiary of Borrower that is a Foreign Subsidiary or (ii) a CFC Holdco.

“Excluded Energy Storage Subsidiaries” means those direct or indirect Subsidiaries of the Borrower (a) in which the Borrower owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets other than Energy Storage Assets, (c) whose sole assets consist of Equity Interests in Excluded Energy Storage Subsidiaries of the type described in the foregoing clause (b) or (d) created for or encumbered by transactions involving monetization of credits, certificates or incentives.

“Excluded Subsidiary” means (i) any Subsidiary to the extent (and for so long as) a Guarantee by such Subsidiary would be prohibited or restricted by applicable law, rule or regulation or by any restriction in any contract existing on the Effective Date or, so long as any such restriction in any contract is not entered into in contemplation of such Subsidiary becoming a Restricted Subsidiary, at the time such Subsidiary becomes a Restricted Subsidiary (including any requirement to obtain the consent, approval, license or authorization of any Governmental Authority (including any regulatory authority) or third party), (ii) Excluded Domestic Subsidiaries (and any direct or indirect Subsidiary thereof), (iii) any Subsidiary that is a Foreign Subsidiary or a CFC Holdco (and any direct or indirect Subsidiary thereof), (iv) Unrestricted Subsidiaries (and any direct or indirect Subsidiary thereof), (v) Captive Insurance Subsidiaries, (vi) not-for-profit Subsidiaries, (vii) special purpose entities (including finance entities), (viii) any Immaterial Subsidiary, (ix) any subsidiary to the extent that the burden or cost of obtaining a guaranty outweighs the benefit afforded thereby as determined by Borrower in consultation with the Administrative Agent, (x) any Subsidiary to the extent a Guarantee by such Subsidiary would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent, (xi) any Subsidiary formed to satisfy state dealer requirements, (xii) any Specified Tesla Subsidiary, (xiii) for the avoidance of doubt, any direct or indirect Subsidiary of an Excluded Subsidiary (other than, in each case, any such direct or indirect Subsidiary that is a Discretionary Guarantor) and (xiv) any Subsidiary that is not a wholly-owned Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on, with respect to or required to be withheld or deducted from a payment to the Administrative Agent, any Lender or any other recipient: (a) Taxes imposed on (or measured by) net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Person being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposes such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment requested by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to the Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Person’s failure to comply with Section 2.16(f) and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by that certain First Amendment to Amendment and Restated ABL Credit Agreement, dated as of December 23, 2020), among the Borrower, Tesla Motors Netherlands B.V., the lenders party from time to time thereto and Deutsche Bank AG New York Branch, as administrative agent.

“Existing Maturity Date” has the meaning assigned to such term in Section 2.05(a).

“Extending Lender” has the meaning assigned to such term in Section 2.05(b).

“Extension Request” has the meaning assigned to such term in Section 2.05(a).

“Facility” means the Commitments and the Loans made thereunder.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement or any amended or successor version that is substantively comparable and not materially more

onerous to comply with, any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Floor” means 0.0%.

“Foreign Currency” means (i) Euros and (ii) Pounds Sterling.

“Foreign Pension Plan” means any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Funding Office” means the Administrative Agent’s office located at One Penn’s Way, OPS II, New Castle, DE 19720, Attn: Agency Operations, or such other office as may be designated by the Administrative Agent by written notice to the Borrower and the relevant Lenders.

“GAAP” means (a) with respect to the Borrower and any other Person organized under the laws of any state in the United States of America, generally accepted accounting principles in the United States as in effect from time to time and (b) with respect to any other Person organized under the laws of any Governmental Authority outside of the United States, generally accepted accounting principles in the country of such Person’s organization or generally accepted accounting principles of the International Accounting Standards Board, or International Financial Reporting Standards as designated by the Borrower, in each case as the same are applicable to the circumstances as of the date of determination.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the

purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantee Agreement” means the Guarantee Agreement to be executed and delivered by each Guarantor, substantially in the form of Exhibit J hereto.

“Guarantors” means each Discretionary Guarantor which becomes a Guarantor and each Domestic Subsidiary of the Borrower which becomes a Guarantor pursuant to Section 5.09 (in each case other than any such Domestic Subsidiary that has been released from its guarantee under the Guarantee Agreement in compliance with the terms of the Loan Documents).

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, 1,4-dioxane, radon gas, infectious or medical wastes, and all other substances or wastes of any nature regulated pursuant to or that could give rise to liability under, any Environmental Law due to their dangerous or deleterious properties or effects.

“Host Customer Agreements” means the Energy Storage Agreements and Customer Lease Agreements.

“Illegality Notice” has the meaning assigned to such term in Section 2.22.

“Immaterial Subsidiary” means, as of the most recently ended fiscal quarter of the Borrower, any wholly-owned Domestic Subsidiary of the Borrower, taken together with its consolidated subsidiaries (x) whose consolidated total assets (as set forth in the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany assets), do not constitute more than 5.0% of the Consolidated Total Assets and (y) whose consolidated total revenues (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany revenues) do not constitute more than 5.0% of the consolidated total revenues of the Borrower and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

“Increasing Lender” has the meaning assigned to such term in Section 2.02(e).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable

incurred in the ordinary course of business and obligations in respect of the funding of Plans under ERISA or the Code), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (provided that the amount of any such Indebtedness that has not been assumed shall be equal to the lesser of the face amount of such Indebtedness and the fair market value of the property subject to such Lien), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations in respect of the principal of any Indebtedness incurred in connection with any Securitization Transaction in which such Person participates and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include (i) accrued expenses and deferred tax and other credits incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (ii) any earn-out obligations to the extent such obligation is due and payable, (iii) obligations incurred among the Borrower and its Restricted Subsidiaries in the ordinary course of business for the purchase of goods and services, (iv) third party obligations included in the Borrower's financial statements as a result of variable interest entity accounting and (v) payments for property or services in the ordinary course of business that are payable over a period not to exceed one year and at 0% interest.

"Indemnified Taxes" means Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower hereunder.

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Index Debt" means senior, unsecured, long-term indebtedness for borrowed money of the Borrower that is not guaranteed by any other Person or subject to any other credit enhancement.

"Information" has the meaning assigned to such term in Section 9.12.

"Insurance Subsidiary" means any Subsidiary of the Borrower that is engaged in the insurance business.

"Intellectual Property" has the meaning assigned to such term in Section 3.18.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07, which shall be substantially in the form of Exhibit F hereto or any other form approved by the Administrative Agent.

"Interest Payment Date" means (a) with respect to any ABR Loan, each Quarterly Payment Date, (b) with respect to any Term Benchmark Loan, as applicable, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) with respect to any SONIA Loan, each date that is on the numerically corresponding day in each calendar month that is one month after the borrowing of such advance (or, if there is no such corresponding day in such month, then the last day of such month).

“Interest Period” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Term Benchmark Borrowing, as applicable, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Term Benchmark Borrowing, as applicable, that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

“IRS” means the U.S. Internal Revenue Service.

“Interpolated Rate” means, at any time, with respect to any Term Benchmark Borrowings denominated in Euros and for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the EURIBOR Rate for the longest period (for which the EURIBOR Rate is available) that is shorter than the Interest Period and (b) the EURIBOR Rate for the shortest period (for which that EURIBOR Rate is available) that exceeds the Interest Period, in each case, at approximately 11:00 a.m. (Brussels time) two TARGET Days prior to the commencement of such Interest Period.

“Issuing Bank” means CITIBANK, N.A., DEUTSCHE BANK AG NEW YORK BRANCH, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY BANK, N.A., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH, WELLS FARGO BANK, NATIONAL ASSOCIATION, and any other Lender that agrees to act as an Issuing Bank, each in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.04(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “Issuing Bank” in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant Issuing Bank with respect thereto.

“Joint Bookrunners” means, collectively, CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC and WELLS FARGO SECURITIES, LLC, in their capacities as joint bookrunners.

“Joint Lead Arrangers” means, collectively, CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC and WELLS FARGO SECURITIES, LLC, in their capacities as joint lead arrangers.

“Judgment Currency” has the meaning assigned to such term in Section 9.16(b).

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the LC Exposure at such time.

“Lead Arrangers” means, collectively, the Joint Lead Arrangers and the Joint Bookrunners.

“Lenders” means the Persons listed on Schedule 1.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to Section 2.02(e), other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Issuing Banks.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Agreement” has the meaning assigned to it in Section 2.04(b).

“Letter of Credit Commitment” means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit hereunder. The initial amount of each Issuing Bank’s Letter of Credit Commitment is set forth on Schedule 1.01 as its “Letter of Credit Commitment”, or if an Issuing Bank has entered into an Assignment and Assumption or has otherwise assumed a Letter of Credit Commitment after the Effective Date, the amount set forth for such Issuing Bank as its Letter of Credit Commitment in the Register maintained by the Administrative Agent. The Letter of Credit Commitment of an Issuing Bank may be modified from time to time by agreement between such Issuing Bank and the Borrower, and notified to the Administrative Agent. The initial aggregate amount of the Issuing Banks’ Letter of Credit Commitments as of the Effective Date is USD\$500,000,000.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, financing lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities; provided that “Lien” shall not include any non-exclusive licenses to Intellectual Property in the ordinary course of business or not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries.

“Loan Documents” means this Agreement, including schedules and exhibits hereto, each Letter of Credit, the Guarantee Agreement and any agreements entered into in connection herewith by the Borrower with or in favor of the Administrative Agent and/or the Lenders, including any Notes, and, in each case, any amendments, modifications or supplements thereto or waivers thereof.

“Loan Party” means the Borrower and each Guarantor.

“Loans” means the Loans made by the Lenders to the Borrower pursuant to Section 2.03 of this Agreement.

“Manufacturing Facility” means any manufacturing facilities or Gigafactory facilities established by the Borrower or any of its Subsidiaries from time to time.

"Marketable Securities" means, with respect to any Person, investments by such Person in time deposits and fixed income securities with original maturities greater than three (3) months that have a determinable fair value, are liquid and are readily convertible into cash. For avoidance of doubt, (i) such investments are passive investments, purchased by such Person in the ordinary course of business as part of its liquidity and/or cash management activities and (ii) for all purposes of the Loan Documents, the amount of Marketable Securities of the Borrower and its Domestic Subsidiaries as of the last day of any fiscal quarter or fiscal year of the Borrower is equal to the amount reported on the Borrower's Annual Report on Form 10-K and Quarterly Report on Form 10-Q consolidated balance sheet for such fiscal quarter or fiscal year, as the case may be, as the line "Short-term marketable securities" or "Investments", less any adjustment for securities that do not satisfy the requirements of the first sentence of this definition.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, property or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole or (b) legality, validity or enforceability of the Loan Documents.

"Material Indebtedness" means Indebtedness (other than the Loans, Letters of Credit and non-recourse Indebtedness), or obligations in respect of Swap Agreements, of any one or more of the Borrower and the Restricted Subsidiaries that are also Significant Subsidiaries in an aggregate principal amount exceeding \$350,000,000 (or, if denominated in another currency, the equivalent thereof in Dollars). For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Restricted Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means the later of (a) January 20, 2028 and (b) for any Lender agreeing to extend its Maturity Date pursuant to Section 2.05, such date pursuant to which the Maturity Date of such Lender has been extended; provided, however, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Maximum Rate" has the meaning assigned to it in Section 9.20.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA that is subject to ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions, or has any liability.

"Non-Consenting Lender" means any Lender that withholds its consent to any proposed amendment, modification or waiver that cannot become effective without the consent of such Lender under Section 9.02 and that has been consented to by the Required Lenders.

“Non-Extending Lender” has the meaning assigned to such term in Section 2.05(b).

“Non-Funding Lender” has the meaning assigned to such term in Section 2.19(c).

“Note” has the meaning assigned to such term in Section 2.09(e).

“NYFRB” means The Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that, if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. New York City time on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all advances to, and debts, liabilities and obligations of, the Borrower arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the foregoing, the Obligations include: (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

“Other Connection Taxes” means, with respect to any Lender, Taxes imposed, as a result of a present or former connection between the Lender and the jurisdiction imposing such Taxes (other than a connection arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to, or enforced, this Agreement, or sold or assigned an interest in any Loan).

“Other Taxes” means any and all present or future stamp, or documentary, Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery, or enforcement of, or otherwise with respect to, this Agreement, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight borrowings by U.S. managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“Overnight Rate” means for any day, (a) with respect to any amount denominated in Dollars, the Federal Funds Effective Rate and (b) with respect to any amount denominated in a Foreign Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight deposits in the relevant Foreign Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of the Administrative Agent in the applicable offshore interbank market for such Foreign Currency to major banks in such interbank market.

“Participant” has the meaning set forth in Section 9.04(c).

“Participant Register” has the meaning set forth in Section 9.04(c).

“Participating Member State” means each state so described in any EMU legislation.

“Payment Recipient” has the meaning assigned to it in Section 8.07(a).

“Payoff” has the meaning set forth in Section 4.01(f).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 5.04;
- (c) Liens made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, government contracts, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) easements, zoning restrictions, rights-of-way and similar encumbrances and other minor defects or irregularities in title on real property imposed by law or arising in the ordinary course of business that are not substantial in amount and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Restricted Subsidiary;

(f) licenses (with respect to any Intellectual Property and other property), leases or subleases granted to third parties by the Borrower and its Restricted Subsidiaries in the ordinary course of business or not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(g) any (i) interest or title of a lessor or sublessor under any lease of property to the Borrower or any of its Restricted Subsidiaries, (ii) Lien or restriction that the interest or title of such lessor or sublessor referred to in the preceding clause (i) may be subject to or (iii) subordination of the interest of the lessee or sublessee under such lease to any Lien or restriction referred to in the preceding clause (ii), so long as the holder of such Lien or restriction agrees to recognize the rights of such lessee or sublessee under such lease;

(h) (i) Liens incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller, broker or shipper of such goods or assets and only attach to such goods or assets, (ii) deposits as security for contested taxes or contested import or customs duties and (iii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods so long as such Liens only cover the related goods;

(i) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property owned or leased by the Borrower or any of its Restricted Subsidiaries;

(j) any judgment Lien not constituting an Event of Default under clause (k) of Section 7.01 hereof;

(k) Liens granted by the Borrower or a Restricted Subsidiary in connection with a transfer of assets from by the Borrower or such Restricted Subsidiary to a Securitization Subsidiary in connection with a Securitization Transaction so long as such Liens cover only the assets so transferred;

(l) reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and its Restricted Subsidiaries;

(m) customary rights of first refusal, voting, redemption, transfer or other restrictions with respect to the Equity Interests in any joint venture entities or other Persons that are not Subsidiaries;

(n) any interest or title of a licensor under any license or sublicense entered into by the Borrower or any Subsidiary as a licensee or sublicensee (A) existing on the date hereof or (B) in the ordinary course of its business;

(o) Liens arising out of any conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by the Borrower or any of its Subsidiaries in the ordinary course of business to the extent such Liens do not attach to any assets other than the goods subject to such arrangements;

(p) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements with the Borrower or any Subsidiary in the ordinary course of business;

(q) licensing and cross-licensing arrangements entered into by the Borrower and its Subsidiaries for purposes of enforcing, defending or settling claims with respect to the Intellectual Property of the Borrower and its Subsidiaries and not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(r) Liens on earnest money deposits made in the ordinary course of business in connection with any agreement in respect of an anticipated acquisition or other investment;

(s) Liens on assets arising in connection with the sale or transfer of such assets in a transaction permitted hereunder and customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof; and

(t) Liens arising by virtue of Uniform Commercial Code financing statement filings (or similar filings under applicable law) regarding operating leases entered into by the Borrower in the ordinary course of business;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Permitted Holder” shall mean each of Elon Musk and his estate, spouse, siblings, ancestors, heirs, and lineal descendants, and any spouses of such Persons, the legal representatives of any of the foregoing, and any bona fide trust of which one or more the foregoing are the principal beneficiaries or grantors, or any other Person that is controlled by any of the foregoing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (as defined in Section 3(2) of ERISA, other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 28 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, as amended from time to time.

“Pounds Sterling” or “£” means the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

“Pricing Grid” means the table set forth below:

Level	Rating	Applicable Rate		Commitment Fee Rate
		Term Benchmark Spread/SONIA Spread	ABR Spread	
I	≥ A or A2	77.5 bps	0.0 bps	5.0 bps
II	A- or A3	90.0 bps	0.0 bps	7.5 bps
III	BBB+ or Baa1	102.5 bps	2.5 bps	10.0 bps
IV	BBB or Baa2	115.0 bps	15.0 bps	12.5 bps
V	BBB- or Baa3	127.5 bps	27.5 bps	15.0 bps
VI	BB+ or Ba1	152.5 bps	52.5 bps	25.0 bps
VII	≤ BB or Ba2	177.5 bps	77.5 bps	27.5 bps

For purposes of the foregoing, (i) if the ratings established or deemed to have been established by Moody’s and S&P for the Index Debt shall fall within different Levels, the Applicable Rate shall be based on the higher of the two ratings (i.e., the higher Level) unless one of the two ratings is two or more Levels lower than the other, in which case the Applicable Rate shall be determined by reference to the Level next below the higher of the two Levels (it being understood that Level I is the highest Level and Level VII is the lowest Level); (ii) if the ratings established or deemed to have been established by Moody’s and S&P for the Index Debt shall be changed (other than as a result of a change in the rating system of Moody’s or S&P), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent and the Lenders pursuant to Section 5.01 or otherwise and (iii) if either Moody’s or S&P shall not have in effect a rating for the Index Debt (other than by reason of the circumstances described in the last sentence of this definition), then such rating agency shall be deemed to have established a rating equivalent to the rating of the other rating agency. Each change in the Applicable Rate shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody’s or S&P changes, or if either such rating agency ceases to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate shall be determined by reference to the rating most recently in effect prior to such change or cessation.

“Prime Rate” means the rate of interest per annum announced from time to time by the Administrative Agent to be its prime rate in effect at its principal office in New York City. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Project” means an Energy Storage System together with all associated real property rights, rights under the applicable Host Customer Agreement, and all other related rights to the extent applicable thereto, including without limitation, all parts and manufacturers’ warranties and rights to access customer data.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to it in Section 9.18.

“Quarterly Payment Dates” means the last Business Day of March, June, September and December in each year, the first of which shall be March 31, 2023.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Register” has the meaning set forth in Section 9.04(b)(iv).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board as in effect from time to time.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective partners, directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Relevant Governmental Body” means, (a) with respect to a Benchmark Replacement in respect of Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Dollars, the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto and (b) with respect to a Benchmark Replacement in respect of Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, any Foreign Currency, (1) the central bank for the Foreign Currency in which such Obligations, interest, fees, commissions or other amounts are denominated, or calculated with respect to, or any central bank or other supervisor which is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement or (2) any working group or committee officially endorsed or convened by (A) the central bank for the Foreign Currency in which such Obligations, interest, fees, commissions or other amounts are denominated, or calculated with respect to, (B) any central bank or other supervisor that is responsible for supervising either (i) such Benchmark Replacement or (ii) the administrator of such Benchmark Replacement, (C) a group of those central banks or other supervisors or (D) the Financial Stability Board or any part thereof.

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Adjusted Term SOFR Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the Adjusted EURIBOR Rate or (iii) with respect to any Borrowing denominated in Pounds Sterling, the Daily Simple SONIA.

“Removal Effective Date” has the meaning set forth in Section 8.03.

“Rental Account Assets” means (i) Rental Accounts and related payment intangibles, chattel paper, electronic chattel paper, payments, rights to current and future lease or rental payments or residuals and similar rights to payment, in each case relating to Rental Accounts, together with interests in merchandise or goods the lease or rental of which give rise to such payment rights and proceeds, related contractual rights, guarantees, insurance proceeds, books and records, collections, proceeds of the foregoing and beneficial interests and the proceeds of beneficial interests in all of the foregoing, and (ii) Equity Interests in Tesla Finance Subsidiaries and the proceeds thereof.

“Rental Accounts” means accounts arising out of customer lease or rental agreements.

“Replacement Lender” has the meaning set forth in Section 2.19(c).

“Required Lenders” means, subject to Section 2.20, at any time, Lenders having Credit Exposures and unused Commitments representing more than 50% of the sum of the Total Credit Exposure and unused Commitments at such time.

“Reset Date” has the meaning set forth in Section 2.18(a).

“Resignation Effective Date” has the meaning set forth in Section 8.03.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer or any other senior or executive officer of a Person.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Restricted Subsidiary” means any Subsidiary other than an Unrestricted Subsidiary. Any Subsidiary designated as an Unrestricted Subsidiary may be re-designated as a Restricted Subsidiary, pursuant to a certificate of an Authorized Officer of the Borrower delivered to the Administrative Agent for such purposes, as long as, after giving effect thereto, no Event of Default has occurred and is continuing.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans at such time (including the Dollar Amount of any such Lender’s Loans denominated in Euros or Pounds Sterling, as applicable).

“S&P” means S&P Global Ratings.

“Sanctioned Country” means a country, region or territory which is itself the target of any countrywide, region-wide or territory-wide Sanctions (at the time of this Agreement, the Crimea, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, and the non-government controlled areas of the Kherson and Zaporizhzhia regions of Ukraine, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means (a) any Person listed in any Sanctions-related list of designated persons maintained by the U.S. government, including individuals or entities named on the Office of Foreign Assets Control of the U.S. Department of the Treasury’s Specially Designated Nationals List and Blocked Persons List, Foreign Sanctions Evaders Lists and, to the extent dealings are prohibited, Persons named on the Sectoral Sanctions Identifications List, or by the United Nations Security Council, the United Kingdom or the European Union, or any E.U. member state with jurisdiction over the parties hereto, (b) any Person located, organized or ordinarily resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) or (b) hereof.

“Sanctions” means, with respect to any Person, all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any E.U. member state with jurisdiction over the parties hereto or His Majesty’s Treasury of the United Kingdom.

“SEC” means the U.S. Securities and Exchange Commission or any successor thereto.

“Securitization Subsidiary” means a wholly-owned Subsidiary of the Borrower that is a special purpose vehicle that has been established for the sole purpose of facilitating a financing in connection with a Securitization Transaction permitted by this Agreement and that shall not engage in any activities other than in connection with such Securitization Transaction. For the avoidance of doubt, an Excluded Charging Subsidiary, an Excluded Energy Storage Subsidiary and any Tesla Finance Subsidiary may be a Securitization Subsidiary.

“Securitization Transaction” means (i) any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or such Restricted Subsidiary may warehouse, sell, convey or otherwise transfer a discrete pool of assets (whether now existing or arising in the future) to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary other than a Securitization Subsidiary) and (b) any other Person (in the case of a transfer by a Securitization Subsidiary), for the purpose of the incurrence by such other Person of Indebtedness secured by a Lien on, or backed by the cash proceeds of, such assets (or beneficial interests of such assets) or of certificates representing beneficial interests in such assets or (ii) any transaction or series of transactions (including borrowings pursuant to any credit agreement) that may be entered into by any Securitization Subsidiary pursuant to which such Securitization Subsidiary may grant a security interest in its assets (whether now existing or arising in the future) in connection with the incurrence of Indebtedness by such Securitization Subsidiary.

“Significant Subsidiary” means, at any time, any Subsidiary that is not an Immaterial Subsidiary.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Loan” means a Loan that bears interest at a rate based on the Adjusted Term SOFR Rate, other than pursuant to clause (c) of the definition of “Alternate Base Rate.”

“SONIA” means a rate equal to the Sterling Overnight Index Average as administered by the SONIA Administrator, and when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Daily Simple SONIA.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“SONIA Administrator’s Website” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“SONIA Business Day” means, for any obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to Pounds Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

“SONIA Rate Day” has the meaning assigned to it in the definition of “Daily Simple SONIA”.

“Specified Borrower Indebtedness” means (i) any bonds, notes, debentures and other debt securities issued by the Borrower pursuant to a public offering or Rule 144A private placement (and any Registered Equivalent Notes issued in exchange therefor) and (ii) any syndicated credit facility entered into by the Borrower.

“Specified Tesla Subsidiary” means any Subsidiary that is (i) a Securitization Subsidiary, (ii) a Tesla Finance Subsidiary, (iii) an Excluded Charging Subsidiary, (iv) an Excluded Energy Storage Subsidiary, (v) an Insurance Subsidiary, (vi) an Effective Date TEO Subsidiary or (vii) any direct or indirect subsidiary of TEO formed primarily for the purpose of incurring indebtedness permitted under Section 6.08(m).

“Standard Securitization Undertakings” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary that are reasonably customary in a Securitization Transaction, including those relating to the servicing of the assets of a Securitization Transaction (it being understood that in no event shall Standard Securitization Undertakings include any Guarantee of Indebtedness incurred in connection with the relevant Securitization Transaction, other than Liens satisfying the requirements of paragraph (k) of the definition of “Permitted Encumbrances” herein).

“Stated Amount” or “Stated Amounts” means the stated or face amount of such Letter of Credit to the extent available at the time for drawing (subject to presentment of all requisite documents), as the same may be increased or decreased from time to time in accordance with the terms of such Letter of Credit. For purposes of calculating the Stated Amount of any Letter of Credit at any time:

(A) any increase in the Stated Amount of any Letter of Credit by reason of any amendment to any Letter of Credit shall be deemed effective under this Agreement as of the date the relevant Issuing Bank actually issues an amendment purporting to increase the Stated Amount of such Letter of Credit, whether or not such Issuing Bank receives the consent of the Letter of Credit beneficiary or beneficiaries to the amendment, except that if the Borrower has required that the increase in Stated Amount be given effect as of an earlier date and such Issuing Bank issues an amendment to that effect, then such increase in Stated Amount shall be deemed effective under this Agreement as of such earlier date requested by the Borrower; and

(B) any reduction in the Stated Amount of any Letter of Credit by reason of any amendment to any Letter of Credit shall be deemed effective under this Agreement as of the later of (x) the date the applicable Issuing Bank actually issues an amendment purporting to reduce the Stated Amount of such Letter of Credit, whether or not the amendment provides that the reduction be given effect as of an earlier date or (y) the date the applicable Issuing Bank receives the written consent of the Letter of Credit beneficiary or beneficiaries to such reduction, whether written consent must be dated on or after the date of the amendment issued by such Issuing Bank purporting to effect such reduction.

“Statutory Reserve Percentage” means, for any day during any Interest Period, the reserve percentage in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D) or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans. The Adjusted EURIBOR Rate for each outstanding Loan shall be adjusted automatically as of the effective date of any change in the Statutory Reserve Percentage.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held.

“Subsidiary” means any subsidiary of the Borrower.

“Supported OFC” has the meaning assigned to it in Section 9.18.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Restricted Subsidiaries shall be a Swap Agreement.

“Syndication Agent” means Deutsche Bank Securities Inc., in its capacity as syndication agent.

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings (including backup withholdings) imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“TEO” means Tesla Energy Operations, Inc., a Delaware corporation.

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate or the Adjusted EURIBOR Rate.

“Term SOFR” means:

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first (1st) preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first (1st) preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first (1st) preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first (1st) preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR Term SOFR Determination Day.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Tesla Finance Subsidiaries” means (i) Tesla Finance, LLC and its subsidiaries and (ii) Tesla Financial Services Holdings B.V. and its subsidiaries, including Tesla Financial Services Limited and Tesla Financial Services GmbH.

“Total Available Commitments” means, at any time, an amount equal to the excess, if any, of (a) the total Commitments then in effect, over (b) the Total Credit Exposure.

“Total Credit Exposure” means, the sum of the Dollar Amount of the outstanding principal amount of all Lenders’ Loans and their LC Exposure at such time.

“Transactions” means the (a) execution, delivery and performance by the (i) Borrower of this Agreement and (ii) Guarantors of the Guarantee Agreement, (b) borrowing of Loans and the use of the proceeds thereof and (c) the issuance of Letters of Credit hereunder.

“Treaty” means the Treaty establishing the European Economic Community, being the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1987, the Maastricht Treaty (which was signed at Maastricht on February 7, 1992 and came into force on November 1, 1993), the Amsterdam Treaty (which was signed at Amsterdam on October 2, 1997 and came into force on May 1, 1999) and the Nice Treaty (which was signed on February 26, 2001), each as may be further amended, supplemented or otherwise modified from time to time and as referred to in legislative measures of the European Union for the introduction of, changeover to or operating of the Euro in one or more member states.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate, the Daily Simple SONIA or the Alternate Base Rate.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unrestricted Subsidiary” means any Subsidiary that (a) is existing as of the Effective Date, (b) is a Securitization Subsidiary or (c) is not a Significant Subsidiary and, in each case, is designated as an Unrestricted Subsidiary by the Borrower by delivery to the Administrative Agent after the date hereof of a certificate of an Authorized Officer of the Borrower (substantially in the form of Exhibit H hereto); provided that in each such case, such Subsidiary shall satisfy the following conditions:

- (1) no portion of the Indebtedness or any other obligations (contingent or otherwise) of the Subsidiary,
 - (a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding in the case of a Securitization Subsidiary, pursuant to Standard Securitization Undertakings),
 - (b) is recourse to the Borrower or any Restricted Subsidiary, other than (to the extent applicable) pursuant to Standard Securitization Undertaking, or
 - (c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than Liens satisfying the requirements of paragraph (k) of the definition of “Permitted Encumbrances” or, in the case of a Securitization Subsidiary, pursuant to Standard Securitization Undertakings;
- (2) neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding with the Subsidiary, other than (x) Standard Securitization Undertakings or (y) on terms (taken as a whole) no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and
- (3) neither the Borrower nor any Restricted Subsidiary has any obligation to maintain or preserve the Subsidiary’s financial condition or cause the Subsidiary to achieve certain levels of operating results.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Special Resolution Regimes” has the meaning assigned to it in Section 9.18.

“U.S. Tax Compliance Certificate” means a certificate substantially in the form of Exhibits I-1 through I-4 hereto, as applicable.

“Used” shall mean, with respect to any inventory, that such inventory was previously sold (other than to a Loan Party), excluding remanufactured items.

“Used Motor Vehicles” means all Used motor vehicles owned by the Borrower or any of its Subsidiaries.

“Vehicle Environmental Attribute” means any credit, benefit, reduction, offset or allowance, howsoever entitled or named, relating to the emissions or environmental impacts that result

from, are attributable to, or are associated with a vehicle, a vehicle's use, or a vehicle charging station that is capable of being measured, verified or calculated and in any case may be lawfully marketed to third parties. By way of illustration, Vehicle Environmental Attributes may result from: new energy vehicles; zero emission vehicles; fuel economy; avoided criteria air pollutants, CO2 or greenhouse gas emissions; low carbon, renewable or clean fuel; and other credits and offsets defined under any applicable vehicle and charging-related private or governmental program, including, without limitation, the following credits: California LEV III NMOG +NOx, US CAFE, US GHG, US Tier 3 NMOG + NOx, Canada GHG, Quebec ZEV, EU CO2 Pooling, and Switzerland GHG Credits and Low Carbon Fuel Standards credits. Notwithstanding any of the foregoing in this definition or any other provision of this Agreement, Vehicle Environmental Attributes shall not include: (i) any of the foregoing obtained by, provided to, used by or necessary for the Borrower or any of its Subsidiaries to conduct any of its operations at any location; or (ii) any automotive tax credits.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means the Borrower and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Term Benchmark Loan", "SONIA Loan" or "ABR Loan"). Borrowings also may be classified and referred to by Type (e.g., a "Term Benchmark Borrowing", "SONIA Borrowing" or "ABR Borrowing").

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and any definition of or reference to any law, statute, regulation, rule or other legislative action shall mean such law, statute, regulation, rule or other legislative action as amended, supplemented or otherwise modified from time to time, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law, rule or regulation herein shall, unless

otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (b) any treatment of Indebtedness under Accounting Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

SECTION 1.05. Currency Equivalents Generally. (a) If more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then (i) any reference in this Agreement to, and any obligations arising under this Agreement in, the currency of that country shall be translated into or paid in the currency or currency unit of that country designated by the Administrative Agent and (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognized by the central bank for conversion of that currency or currency unit into the other, rounded to the nearest thousandth by the Administrative Agent as it reasonably deems appropriate.

(b) If a change in any currency of a country occurs, this Agreement shall be amended (and each party hereto agrees to enter into any supplemental agreements necessary to effect any such amendment) to the extent that the Administrative Agent and the Borrower reasonably determine such amendment to be necessary to reflect the change in currency and to put the Lenders in the same position, so far as possible, that they would have been in if no change in currency had occurred.

SECTION 1.06. Interest Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, Adjusted Term SOFR Rate, Term SOFR, Adjusted EURIBOR Rate, EURIBOR, the Daily Simple SONIA, SONIA or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Adjusted Term SOFR Rate, Term SOFR, Adjusted EURIBOR Rate, EURIBOR, the Daily Simple SONIA, SONIA or any other Benchmark prior to its discontinuance or unavailability or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates

or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR Rate, Adjusted EURIBOR Rate, EURIBOR, the Daily Simple SONIA, SONIA any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR Rate, Adjusted EURIBOR Rate, EURIBOR, the Daily Simple SONIA, SONIA or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.07. Divisions. For all purposes under this Agreement, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

Article II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender severally and not jointly agrees to make revolving loans denominated in Dollars, Euros and Pounds Sterling (the "Loans") to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (x) such Lender's Credit Exposure exceeding such Lender's Commitment or (y) the Total Credit Exposure exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans. No portion of the Loan will be funded (initially or through participation, assignment, transfer or securitization) with plan assets of any Benefit Plan if it would cause the Borrower to incur any prohibited transaction excise tax penalties under Section 4975 of the Code or otherwise result in a non-exempt prohibited transaction.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender under the Facility to make any Loan required to be made by it shall not relieve any other Lender under the Facility of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13 and Section 2.21, (i) each Borrowing denominated in Dollars shall be available in the Funding Office and consist entirely of ABR Loans or Term Benchmark Loans bearing interest at the Adjusted Term SOFR Rate, (ii) each Borrowing denominated in Pounds Sterling shall be available in the Funding Office and consist entirely of SONIA Loans and (iii) each Borrowing denominated in Euros shall be available in the Funding Office and consist entirely of Term Benchmark Loans bearing interest at the Adjusted EURIBOR Rate. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and (ii) any such domestic or foreign branch or Affiliate of such Lender shall not be entitled to request compensation under Section 2.14 at the time such Loan is made.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 (and not less than \$10,000,000) (in the case of Euros, an integral multiple of €1,000,000 and not less than €10,000,000). At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments. At the time that each SONIA Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of £1,000,000 and not less than £10,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 Borrowings.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(e) The Borrower may from time to time elect to increase the Commitments of the Facility in a minimum amount of \$25,000,000 in respect of the Facility so long as, after giving effect thereto, the aggregate amount of the Commitments of the Facility does not exceed \$7,000,000,000. The Borrower may arrange for any such increase to be provided by one or more Lenders with a Commitment in the Facility (each Lender so agreeing to an increase in its Commitment, an "Increasing Lender"; it being understood and agreed that each Lender of the Facility approached to provide any such increase shall have the right, but not the obligation, to provide such increase), or by one or more banks, financial institutions or other entities (each such bank, financial institution or other entity, an "Augmenting Lender"), to increase their existing Commitments in respect of the Facility, or extend Commitments in respect of the Facility, as the case may be; provided that (i) each Augmenting Lender, shall be subject to the approval of the Borrower and the Administrative Agent (not to be unreasonably withheld or delayed) and (ii) (x) in the case of an Increasing Lender, the Borrower and such Increasing Lender execute an agreement substantially in the form of Exhibit C hereto and (y) in the case of an Augmenting Lender, the Borrower and such Augmenting Lender execute an agreement substantially in the form of Exhibit D hereto. Increases and new Commitments created pursuant to this paragraph (e) shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Lenders with a Commitment in the Facility and the Administrative Agent shall notify each affected Lender thereof; provided that no increase in the Commitments created pursuant to this paragraph (e) shall become effective less than three (3) Business Days prior to the Maturity Date. Notwithstanding the foregoing, no increase in the Commitments (or in the Commitment of any Lender), shall become effective under this paragraph (e) unless, (i) on the proposed date of the effectiveness of such increase, the conditions set forth in Sections 4.02(a) and (b) shall be satisfied or waived by the Required Lenders with a Commitment in the Facility and the Administrative Agent shall have received a certificate to that effect dated such date and executed by an Authorized Officer of the Borrower and (ii) the Administrative Agent shall have received

documents consistent with those delivered on the Effective Date under Section 4.01 as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase. On the effective date of any increase in the Commitments of the Facility, (i) each relevant Increasing Lender with a Commitment in the Facility and Augmenting Lender with a Commitment in the Facility shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other relevant Lenders in the Facility, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other relevant Lenders in the Facility, each Lender's portion of the outstanding Loans under the Facility of all the Lenders with Commitments in the Facility to equal its Applicable Percentage of such outstanding Loans under the Facility, (ii) the Lenders shall purchase and assume (without recourse or warranty) from the Lenders undivided participation interests in any outstanding LC Exposure to the extent necessary to ensure that after giving effect to any such increase in the Commitments of the Facility, each Lender has outstanding Loans and participation interests in outstanding LC Exposure equal to its Applicable Percentage and (iii) the Borrower shall be deemed to have repaid and re-borrowed all outstanding Loans of the Facility as of the date of any increase in the Commitments of the Facility (with such re-borrowing to consist of the Types of Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (iii) of the immediately preceding sentence in respect of any Term Benchmark Loan or SONIA Loan shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.15 if the deemed payment occurs other than on the last day of the related Interest Periods.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the Business Day of the proposed ABR Borrowing, (b) in the case of a Term Benchmark Borrowing denominated in Dollars, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Term Benchmark Borrowing, (c) in the case of a SONIA Borrowing, not later than 1:00 p.m., London time, five (5) Business Days before the date of the proposed SONIA Borrowing and (d) in the case of a Term Benchmark Borrowing denominated in Euros, not later than 1:00 p.m., London time, three (3) Business Days before the date of the proposed Term Benchmark Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile (or in any other manner approved pursuant to Section 9.01(b)) to the Administrative Agent in the Funding Office of a written Borrowing Request in the form of Exhibit E hereto (except as otherwise agreed by the Administrative Agent and the Borrower) signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) the Agreed Currency of the requested Borrowing;
- (iv) whether such Borrowing is to be an ABR Borrowing, a Term Benchmark Borrowing or a SONIA Borrowing;
- (v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of any Borrowing denominated in Dollars in the Funding Office is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit denominated in Dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and each relevant Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, no Issuing Bank shall have any obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country, (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement or (iii) in any manner that would result in a violation of one or more policies of such Issuing Bank applicable to letters of credit generally. An Issuing Bank shall be under no obligation to issue any Letter of Credit if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date (for which such Issuing Bank is not otherwise compensated hereunder). No Issuing Bank shall have any obligation hereunder to issue any Letter of Credit other than a standby Letter of Credit, unless such Issuing Bank shall so agree.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to any Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three (3) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying (A) the date of issuance, amendment, renewal or extension (which shall be a Business Day), (B) the date on which such Letter of Credit is to expire (which shall comply with Section 2.04(c)), (C) the Stated Amount of such Letter of Credit, (D) the Borrower as the account party and, if desired by the Borrower, one or more Subsidiaries as additional account parties and (E) the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the Borrower shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application, in each case, as required by the applicable Issuing Bank and using such bank's standard form (each, a "Letter of Credit Agreement"). A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after

giving effect to such issuance, amendment, renewal or extension (i) (x) the aggregate undrawn amount of all outstanding Letters of Credit issued by an Issuing Bank at such time, plus (y) the aggregate amount of all LC Disbursements made by such Issuing Bank that have not yet been reimbursed by or on behalf of the Borrower at such time shall not exceed its Letter of Credit Commitment, (ii) the LC Exposure shall not exceed the total Letter of Credit Commitments, (iii) no Lender's Credit Exposure shall exceed its Commitment and (iv) the Total Credit Exposure shall not exceed the total Commitments. The Borrower may, at any time and from time to time, reduce the Letter of Credit Commitment of any Issuing Bank with the consent of such Issuing Bank; provided that the Borrower shall not reduce the Letter of Credit Commitment of any Issuing Bank if, after giving effect of such reduction, the conditions set forth in clauses (i) through (iv) above shall not be satisfied.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from an Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after the then-current expiration date at the time of such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date; provided that any Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii)).

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in Section 2.04(e), or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph (d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent in Dollars such LC Disbursement, calculated as of the date the Issuing Bank made such LC Disbursement not later than 12:00 noon, New York City time, on the first (1st) Business Day immediately following the date that such LC Disbursement is made; provided that, if such LC Disbursement is not less than \$1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a Dollar denominated ABR Loan on the date on which such drawing is honored and in an amount equal to the amount of such drawing and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the

amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph (e), the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph (e) to reimburse the applicable Issuing Bank, then to such Lenders and the applicable Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph (e) to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.04(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.04, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Banks. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction in a final non-appealable ruling), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, within the period stipulated by terms and conditions of the applicable Letter of Credit, examine all documents purporting to represent a demand for payment under such Letter of Credit. The applicable Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telecopy or electronic mail of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate *per annum* then applicable to ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.04(e), then Section 2.12(e) shall apply. Interest accrued

pursuant to this paragraph (h) shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to Section 2.04(e) to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. (i) An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (x) the successor Issuing Bank shall have all the rights and obligations of Issuing Banks under this Agreement with respect to Letters of Credit to be issued thereafter and (y) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Banks, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty (30) days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, such Issuing Bank shall be replaced in accordance with Section 2.06(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph (j), the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date, plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.01(h) or (i). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse any Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(k) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party,"

or the like of or for such Letter of Credit, and without derogating from any rights of the applicable Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the applicable Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(l) Stated Amount. The Stated Amount of each Letter of Credit shall not be less than Ten Thousand Dollars (\$10,000) or such lesser amount as the applicable Issuing Bank has agreed to.

SECTION 2.05. Maturity Date Extension.

(a) Requests for Extension. The Borrower may, by notice, in writing, to the Administrative Agent (which shall promptly notify the Lenders) during the 90-day period prior to each anniversary of the Effective Date, request that each Lender extend such Lender's Maturity Date for an additional year from the Maturity Date then in effect hereunder (such date, the "Existing Maturity Date", and such request, an "Extension Request"); provided that (1) no more than one Extension Request may be made during any twelve-month period and (2) no more than two Extension Requests may be made after the Effective Date.

(b) Lender Elections to Extend. Each Lender, in its sole discretion, shall advise the Administrative Agent whether or not such Lender agrees to such extension. If a Lender agrees to such extension (an "Extending Lender"), it shall notify the Administrative Agent, in writing, of its decision to do so not more than twenty (20) days after the date of such Extension Request. A Lender that determines not to so extend its Commitment shall so notify the Administrative Agent promptly after making such determination and is herein called a "Non-Extending Lender". If a Lender does not give timely notice to the Administrative Agent of whether or not such Lender agrees to such extension, it shall be deemed to be a Non-Extending Lender; provided that any Non-Extending Lender may, with the consent of the Borrower and the Administrative Agent (such consent of the Administrative Agent not to be unreasonably withheld, conditioned or delayed), subsequently become an Extending Lender by notice to the Administrative Agent and the Borrower.

(c) Notification by Administrative Agent. The Administrative Agent shall notify the Borrower promptly of each Lender's determination after the deadline set forth for Lender elections in Section 2.05(b).

(d) Additional Commitment Lenders. If (and only if) the total of the Commitments of the Lenders that have agreed so to extend their Maturity Date shall be more than 50% of the aggregate amount of the Commitments in effect immediately prior to the date of the Extension Request, the Borrower shall have the right, at its own expense, to require any Non-Extending Lender to transfer and assign without recourse (in accordance with and subject to the restrictions contained in Section 9.04) all its interests, rights and obligations under this Agreement to one or more banks or other financial institutions identified to the Non-Extending Lender, which may include any Lender (each an "Additional Lender"); provided that (w) such Additional Lender shall be subject to the approval of each Issuing Bank and, if such Additional Lender is not already a Lender hereunder, the Administrative Agent (such approval not to be unreasonably withheld); (x) such assignment shall become effective as of the date of the extension of the Maturity Date of the Extending Lenders as provided in Section 2.05(e) or any time thereafter on or prior to the effective Maturity Date of the applicable Non-Extending Lender; (y) the

Additional Lender shall pay to such Non-Extending Lender in immediately available funds on the effective date of such assignment the principal of, and interest accrued to the date of payment on, the Loans made by it hereunder and all other amounts accrued for its account or owed to it hereunder and (z) if the assigning Lender is an Issuing Bank, it shall have received cash collateral as required by Section 2.04(j) or it shall have entered into other arrangements with the Borrower that are satisfactory to such Issuing Bank with respect to any outstanding Letters of Credit issued by it. Any such assignee's initial Maturity Date shall be the Maturity Date in effect for the Extending Lenders at the time of such assignment. Any assignee which becomes a Lender as a result of such an assignment made pursuant to this Section 2.05(d) shall be deemed to have consented to the applicable Extension Request and, therefore, shall not be a Non-Extending Lender.

(e) Minimum Extension Requirement. If (and only if) the total of the Commitments of the Lenders that have agreed so to extend their Maturity Date shall be more than 50% of the aggregate amount of the Commitments in effect immediately prior to the date of the Extension Request, then, upon the Borrower's election and prompt notification to the Administrative Agent prior to the relevant anniversary of the Effective Date, subject to the conditions set forth in Section 2.05(f), effective as of the relevant anniversary of the Effective Date, the Maturity Date of each Extending Lender and of each Additional Lender shall be extended to the date falling one year after the Existing Maturity Date (except that, if such date is not a Business Day, such Maturity Date as so extended shall be the immediately preceding Business Day). In the event of any such extension, the Commitment of each Non-Extending Lender that has not been replaced as provided in Section 2.05(d) shall terminate on the Maturity Date in effect prior to any such extension and the outstanding principal balance of all Loans and other amounts payable hereunder to such Non-Extending Lender shall become due and payable on such Maturity Date and the total Commitments of the Lenders hereunder shall be reduced by the Commitments of the Non-Extending Lenders so terminated on such Maturity Date.

(f) Conditions to Effectiveness of Extensions. Notwithstanding the foregoing, the extension of the Maturity Date pursuant to this Section 2.05 shall not be effective with respect to any Lender unless (i) no Default or Event of Default has occurred and is continuing on the date of such extension and after giving effect thereto; and (ii) the representations and warranties of the Borrower contained in Article III and the other Loan Documents are true and correct in all material respects (except to the extent such representations and warranties are qualified by materiality in which case such representations and warranties shall be true in all respects) on and as of the date of the date of such extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.05(f), the representations and warranties contained in Section 3.04(a) shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01. As a condition precedent to each such extension, the Borrower shall deliver to the Administrative Agent a certificate dated as of the date of such extension and signed by a Responsible Officer of the Borrower certifying as to compliance with this Section 2.05(f). Notwithstanding anything to the contrary contained herein, the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement any provision of this Agreement or any other Loan Document to give effect to the extension of the Maturity Date of the Extending Lenders in accordance with the terms of this Section 2.05.

(g) Effect of Maturity Date Extensions. If the Maturity Date in respect of any tranche of Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Commitments in respect of which the Maturity Date shall not have occurred are then in effect, (x) outstanding Loans shall be repaid pursuant to Section 2.10 on such Maturity Date in an amount sufficient to permit the reallocation of the LC Exposure relating to the outstanding Letters of Credit contemplated by clause (y) below and (y) such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders to purchase participations therein

and to make Loans and payments in respect thereof pursuant to Section 2.04(b)) under (and ratably participated in by Lenders pursuant to) the Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Commitments thereunder at such time (it being understood that (A) the participations therein of Lenders under the maturing tranche shall be correspondingly released and (B) no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), but without limiting the obligations with respect thereto, the Borrower shall 100% cash collateralize, back-stop with a satisfactory letter of credit issued by a financial institution satisfactory to the applicable Issuing Bank and the Administrative Agent or otherwise collateralize to the satisfaction of such Issuing Bank and the Administrative Agent the then undrawn and unexpired amount of any such Letter of Credit (without limiting the Borrowers' obligations in respect of payments made by an Issuing Bank pursuant to a Letter of Credit).

SECTION 2.06. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof in the applicable currency by wire transfer of immediately available funds by 2:00 p.m., New York City time, in respect of Loans made in the Funding Office, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in New York City or to such other account of the Borrower as may be agreed by the Borrower and the Administrative Agent, in each case designated by the Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(e) shall be remitted by the Administrative Agent to the relevant Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available in the applicable currency on such date in accordance with Section 2.06(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount in the applicable currency. In such event, if a Lender has not in fact made its share of the applicable Borrowing in the applicable currency available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in the applicable currency with interest thereon, for each day from and including the date such amount is made available to the Borrower in the applicable currency to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of (x) the Federal Funds Effective Rate from time to time in effect and (y) the rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including the Overnight Rate in the case of Loans denominated in a Foreign Currency) or (ii) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.07. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request (or as otherwise determined pursuant to the last paragraph of Section 2.03), as applicable. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, as applicable, in each case as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.07, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile (or in any other manner approved pursuant to Section 9.01(b)) to the Administrative Agent of a written Interest Election Request in the form of Exhibit F hereto (except as otherwise agreed by the Administrative Agent and the Borrower) signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing, a Term Benchmark Borrowing or a SONIA Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request in respect of a Loan, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then at the end of such Interest Period, unless such Borrowing is repaid as provided herein, such Borrowing shall be automatically continued for an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request

of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments under the Facility; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of Loans in accordance with Section 2.10, (A) any Lender's Credit Exposure would exceed its Commitment or (B) the Total Credit Exposure would exceed the total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under Section 2.08(b) at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type and currency thereof, the Facility under which such Loan was borrowed and the Interest Period applicable thereto (if applicable), (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to Sections 2.09(b) or (c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable

to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit G hereto (except as otherwise agreed by the Administrative Agent and the Borrower) (each such promissory note, a “Note”). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.10. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 2.10(b).

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by electronic mail (or in any other manner provided for in Section 9.01(b))) of any prepayment hereunder and (i) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of prepayment, (ii) in the case of prepayment of a Term Benchmark Borrowing denominated in Dollars, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, (iii) in the case of prepayment of a SONIA Borrowing, not later than 1:00 p.m., London time, five (5) Business Days before the date of prepayment and (iv) in the case of prepayment of a Term Benchmark Borrowing denominated in Euros, not later than 1:00 p.m., London time, three (3) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the Facility under which the prepayment is to be made and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice relating to a Borrowing under the Facility, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing under the Facility shall be applied ratably to the Loans included in the prepaid Borrowing, except as provided in Section 2.20. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

(c) The Borrower shall prepay the outstanding principal amount of Loans on any date on which the Dollar Amount of all outstanding Loans and LC Exposure (after giving effect to any other repayments or prepayments on such day) exceeds the total Commitments then in effect (including in each case, without limitation, solely as a result of fluctuation in Exchange Rates), in the amount of such excess and in the applicable currency; provided, however, that if such excess is solely as a result of fluctuation in Exchange Rates, (i) the Borrower shall not be obligated to pay such amount until four (4) Business Days after notice from the Administrative Agent and (ii) the Borrower shall not be obligated to pay such amount unless such excess is greater than the Dollar Amount of an amount equal to 5% of the total Commitments. If, after giving effect to the prepayment of all outstanding Loans pursuant to this Section 2.10(c), the aggregate amount of LC Exposure exceeds the total Commitments then in effect, the Borrower shall cash collateralize LC Exposure by depositing, pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Administrative Agent, cash with the Administrative Agent in an amount equal to the difference between the amount of such LC Exposure and the total Commitments then in effect. The Administrative Agent shall establish in its name for the benefit of the Lenders a collateral account into which it shall deposit such cash to hold as collateral security for the LC Exposure.

SECTION 2.11. Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the daily unused amount of the Commitment of such Lender during the period from and including the Effective

Date to but excluding the date on which such Commitment terminates. Commitment fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third (3rd) Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate. All commitment fees shall be computed on the basis of a year of 365 days (or 366 days, as the case may be) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at a rate *per annum* equal to 0.125% on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the fifteenth (15th) day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph (b) shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees, to the Lenders. Fees paid shall not be refundable under any circumstances other than any Administrative Agent fees which shall be refunded (on a prorated basis) if the Administrative Agent resigns for the relevant period following such resignation.

SECTION 2.12. Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate, plus the Applicable Rate applicable to such Loans.

(b) The Loans comprising each Term Benchmark Borrowing denominated in Dollars shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing, plus the Applicable Rate applicable to such Loans.

(c) The Loans comprising each Term Benchmark Borrowing denominated in Euros shall bear interest at the Adjusted EURIBOR Rate for the Interest Period in effect for such Borrowing, plus the Applicable Rate applicable to such Loans.

(d) The Loans comprising each SONIA Borrowing shall bear interest at the Daily Simple SONIA in effect for such Borrowing, plus the Applicable Rate applicable to such Loans.

(e) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.0%, plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs (a) through (d) of this Section 2.12 or (ii) in the case of any other amount, 2.0%, plus the rate applicable to ABR Loans in the case of amounts denominated in Dollars, Euros or Pounds Sterling as provided in Section 2.12(a).

(f) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to Section 2.12(g) shall be payable within two (2) Business Days after written demand by the Administrative Agent, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(g) All interest hereunder shall be computed on the basis of a year of 365 days (or 366 days, as the case may be), except that interest computed with respect to Term Benchmark Loans shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or the Daily Simple SONIA, as applicable, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. Inability to Determine Rates. With respect to any Term Benchmark Loan or SONIA Loan, subject to Section 2.21, if:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that:

(i) (A) if the Adjusted Term SOFR Rate or Adjusted EURIBOR Rate is utilized in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, "Adjusted Term SOFR Rate" or "Adjusted EURIBOR Rate" cannot be determined pursuant to the definition thereof on or prior to the first day of any Interest Period or (B) if the Daily Simple SONIA is utilized in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, the "Daily Simple SONIA" cannot be determined pursuant to the definition thereof; or

(ii) with respect to any such Loan denominated in a Foreign Currency, a fundamental change has occurred in the foreign exchange or interbank markets with respect to such Foreign Currency (including changes in national or international financial, political or economic conditions or currency exchange rates or exchange controls); or

(b) with respect to any Term Benchmark Loan or any request therefor or a conversion thereto or a continuation thereof, the Required Lenders determine (which determination shall be conclusive and binding absent manifest error) that deposits in the applicable Agreed Currency are not being offered to

banks in the applicable offshore interbank market for the applicable Agreed Currency, amount or Interest Period of such Term Benchmark Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent; or

(c) the Required Lenders determine that for any reason in connection with any request for such Loan or a conversion thereto or a continuation thereof that (i) if the Adjusted Term SOFR Rate or Adjusted EURIBOR Rate is utilized in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, the Adjusted Term SOFR Rate or Adjusted EURIBOR Rate, as applicable, does not adequately and fairly reflect the cost to such Lenders of making or maintaining, continuing or converting to such Loan during the applicable Interest Period or (ii) if the Daily Simple SONIA is utilized in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, the Daily Simple SONIA does not adequately and fairly reflect the cost to such Lenders of making or maintaining, continuing or converting to such Loans, and, in the case of clauses (i) or (ii), the Required Lenders have provided notice of such determination to the Administrative Agent,

then, in each case, the Administrative Agent will promptly so notify the Borrower and each applicable Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make Term Benchmark Loans or SONIA Loans, as applicable, in each such Agreed Currency, and any right of the Borrower to convert any Loan in each such Agreed Currency (if applicable) to or continue any Loan as a Term Benchmark Loans or SONIA Loan, as applicable, in each such Agreed Currency, shall be suspended (to the extent of the affected Term Benchmark Loans or SONIA Loans or, in the case of Term Benchmark Loans, the affected Interest Periods) until the Administrative Agent (with respect to clauses (b) or (c), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans, or a SONIA Borrowing of, conversion to or continuation of SONIA Loans, in each case, in the applicable Agreed Currency and, failing that, (A) in the case of any request for any affected Term Benchmark Borrowing in Dollars, if applicable, the Borrower will be deemed to have converted any such request into a request for an ABR Borrowing or conversion to ABR Loans in the amount specified therein and (B) in the case of any request for any affected Term Benchmark Borrowing or SONIA Borrowing, in each case, in a Foreign Currency, if applicable, then such request shall be ineffective and (ii)(A) any outstanding affected Term Benchmark Loans denominated in Dollars, if applicable, will be deemed to have been converted into ABR Loans immediately and (B) any outstanding affected Term Benchmark Loans or SONIA Loans, in each case, denominated in a Foreign Currency, at the Borrower's election, shall either (I) be converted into ABR Loans denominated in Dollars (in an amount equal to the equivalent thereof in Dollars of such Foreign Currency) immediately or, in the case of Term Benchmark Loans, at the end of the applicable Interest Period or (II) be prepaid in full immediately or, in the case of Term Benchmark Loans, at the end of the applicable Interest Period; provided that, with respect to any SONIA Loan, if no election is made by the Borrower by the date that is three (3) Business Days after receipt by the Borrower of such notice, the Borrower shall be deemed to have elected clause (I) above; provided, further, that, with respect to any Term Benchmark Loan, if no election is made by the Borrower by the earlier of (x) the date that is three (3) Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable Term Benchmark Loan, the Borrower shall be deemed to have elected clause (I) above. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.15.

SECTION 2.14. Increased Costs. (a) If any Governmental Authority shall have in effect at any time during the term of this Agreement any reserve, liquid asset or similar requirement with respect to any category of deposits or liabilities customarily used to fund Term Benchmark Loans or SONIA Loans, as applicable, or by reference to which interest rates applicable to Term Benchmark Loans or

SONIA Loans, as applicable, are determined, and the result of such requirement shall be to increase the cost to any Lender of making or maintaining, continuing or converting to any Term Benchmark Loans or SONIA Loans, as applicable, and such Lender shall have requested, by notice to the Borrower and the Administrative Agent (which notice shall specify the Statutory Reserve Percentage applicable to such Lender), compensation under this paragraph (a), then the Borrower will pay to such Lender (until the earlier of the date such Lender shall advise the Borrower that such requirement is no longer in effect or the date such Lender shall withdraw such request) amounts sufficient to compensate such Lender for such additional costs of making or maintaining, continuing or converting to such Term Benchmark Loans or SONIA Loans, as applicable.

(b) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuing Bank (except to the extent covered by Section 2.14(a));

(ii) impose on any Lender or Issuing Bank, the London interbank market or any applicable market any other cost or expense condition affecting this Agreement, Term Benchmark Loans or SONIA Loans, as applicable, made by such Lender or any Letter of Credit or participation thereon; or

(iii) subject any Lender to any Tax (except for (1) Indemnified Taxes, (2) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (3) Other Connection Taxes imposed on net income, profits or revenue (including value-added or similar Taxes)) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or that are franchise Taxes or branch profits Taxes;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining, continuing or converting to any Term Benchmark Loan or SONIA Loan (or, in the case of Section 2.14(b)(iii), any Loan) or maintaining its obligation to make any such Loan or to increase the cost to such Lender or such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (including, without limitation, pursuant to any conversion of any Borrowing denominated in a Foreign Currency into a Borrowing denominated in any other Foreign Currency) or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(c) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(d) A certificate of a Lender or Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in Sections 2.14(a), (b) or (c) shall be delivered to the Borrower and shall be conclusive and binding on all parties hereto absent manifest error. The Borrower shall pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(e) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.14 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section 2.14 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrower in writing of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15. Break Funding Payments. In the event of (a) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith) or (d) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 (except that a Defaulting Lender required to assign its Loans under Section 2.19(b) shall not be entitled to compensation under this Section 2.15 in connection with such assignment), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, as applicable, such loss, cost or expense to any Lender shall be an amount equal to the amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted Term SOFR Rate or Adjusted EURIBOR Rate, as applicable, that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, in the applicable currency of a comparable amount and period from other banks in the applicable market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.15 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

SECTION 2.16. Taxes. (a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction or withholding for any Taxes; provided that, if any Withholding Agent determines, in its sole discretion exercised in good faith, that it is so required to deduct or withhold Taxes, then (i) such Withholding Agent shall so deduct and withhold and shall pay the full amount of deducted or withheld Taxes to the relevant Governmental Authority in accordance with applicable law and (ii) if such Taxes are Indemnified Taxes or Other Taxes, the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including such deduction or withholding applicable to additional sums payable under this

Section 2.16) the Administrative Agent or each Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Without duplication of amounts payable under Sections 2.16(a) or (b), the Borrower shall indemnify the Administrative Agent and each Lender, within (ten) 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Administrative Agent and each Lender will promptly notify the Borrower of any event of which it has knowledge, which will entitle it to compensation pursuant to this Section 2.16. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent demonstrable error.

(d) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for any Taxes (but, in the case of any Indemnified Taxes or Other Taxes, only to the extent that the Borrower has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Borrower to do so) attributable to such Lender and any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register, in either case, that are paid or payable by the Administrative Agent in connection with this Agreement and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.16, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) The Administrative Agent, each Lender and all recipients of payments to be made by or on account of any obligation of the Borrower hereunder that are entitled to an exemption from or reduction of withholding or backup withholding Tax with respect to any payments under this Agreement shall deliver to the Borrower and the Administrative Agent, on or prior to the Effective Date (or, as applicable, the date on which such Lender becomes a Lender under this Agreement) and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent or as otherwise prescribed by applicable law, such valid, properly completed and duly executed forms, certificates, and documentation (including, as applicable, the applicable U.S. Tax Compliance Certificate, IRS Form W-8ECI, W-8BEN, W-8BEN-E, W-8IMY, or IRS Form W-9) prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without or at a reduced rate of withholding. Any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably

requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to information reporting requirements. In addition, if a payment made to a Lender under this Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Each Lender, the Administrative Agent and each recipient of payment agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect (including, for the avoidance of doubt, if the form is inaccurate because its payee status changes from beneficial owner to intermediary or vice versa), it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Solely for purposes of this Section 2.16(f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) If the Borrower determines in good faith that a reasonable basis exists for contesting any Indemnified Tax or Other Tax, the Administrative Agent and the relevant Lender, as applicable, shall reasonably cooperate with the Borrower in the Borrower's challenging such Tax at the Borrower's expense if requested by the Borrower (it being understood and agreed that none of the Administrative Agent or any of the Lenders shall have any obligation to contest, or any responsibility for contesting, any such Tax). If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.16 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable and documented out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.16 shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(h) Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations hereunder.

(i) For purposes of this Section 2.16, the term "Lender" includes any Issuing Bank.

SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Setoffs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees or reimbursements of LC Disbursements, or of amounts payable under Sections 2.14, 2.15 or 2.16, or otherwise) prior to 2:00 p.m., New York City time, in respect of payments of principal or interest relating to Borrowings, or in respect of any fees payable under this Agreement on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at the Funding Office, in respect of payments of principal or interest relating to Borrowings, or in respect of payments of any fees under this Agreement, or such other office as may be designated by the Administrative Agent by written notice to the Borrower and the Lenders, except payments to be made directly to an Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it to each Lender according to its ratable share (or other applicable share as provided herein) of such payments (or otherwise distribute such payments for the account of any other Person to the appropriate recipient) promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day (unless, in the case of a payment of interest on a Term Benchmark Loan, as applicable, such next succeeding Business Day would fall in the next calendar month, in which case such payment shall be due on the next preceding Business Day), and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars; provided that any payment of principal or interest of an ABR Loan, Term Benchmark Loan, or SONIA Loan, as applicable, shall be made in the currency in which the Loan is denominated.

(b) At any time that payments are not required to be applied in the manner required by Section 7.02, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender under the Facility receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender under the Facility, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders under the Facility to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may

effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of (a) the applicable Federal Funds Effective Rate from time to time in effect and (b) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including the Overnight Rate in the case of Loans denominated in Foreign Currency other than Dollars).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.06(b) or 2.17(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections 2.06(b) and 2.17(d) until all such unsatisfied obligations are fully paid.

SECTION 2.18. Currency Equivalents.

(a) No later than 12:00 Noon, London time, on each Calculation Date with respect to Euros and Pounds Sterling, as applicable, the Administrative Agent shall determine the Exchange Rate as of such Calculation Date with respect to such Foreign Currency. The Exchange Rates so determined shall become effective on the relevant Calculation Date (a "Reset Date"), shall remain effective until the next succeeding Reset Date and shall for all purposes of this Agreement (other than Section 9.16 and any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts from such Foreign Currency to Dollars. The Administrative Agent shall promptly notify the Borrower and the Lenders of each determination of an Exchange Rate hereunder.

(b) No later than 5:00 p.m., London time, with respect to Euros and Pounds Sterling, as applicable, on each Reset Date, the Administrative Agent shall determine the aggregate Dollar Amount of the Term Benchmark Loans denominated in Euros or SONIA Loans, as applicable, then outstanding.

(c) If after giving effect to any determination under Section 2.18(b) and, in each case, to any borrowings and prepayments or repayments of Loans occurring on the applicable Reset Date, (i) the aggregate outstanding Dollar Amount of Loans exceeds the total Commitments then in effect by 5% or more or (ii) the aggregate outstanding Dollar Amount of Loans exceeds the total Commitments then in effect for a period of ten (10) consecutive Business Days, the Borrower shall, within five (5) Business Days after receipt of notice thereof from the Administrative Agent setting forth such calculation in reasonable detail, prepay or cause to be prepaid outstanding Loans in the case of clauses (i) or (ii) above or take other action to the extent necessary to eliminate any such excess.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes,

Other Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment. Each Lender will notify the Borrower promptly upon its determination that an event that is reasonably likely to result in the Borrower being required to pay any additional amount pursuant to Sections 2.14 or 2.16 has occurred, but failure of any Lender to provide such notice shall not affect such Lender's rights or the Borrower's obligations under such Sections 2.14 and 2.16.

(b) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes, Other Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender becomes a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to one or more assignees (which may be one or more Lenders that have agreed to accept such assignment) that shall assume such obligations; provided that (i) other than in the case of a Defaulting Lender or a Non-Consenting Lender, the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks) to any Person that is not already a Lender, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) Without limiting the provisions of Section 2.19(b), in the event of illegality resulting solely from a Lender's own gross negligence as a result of which such Lender is unable to maintain its Commitments or make any Loans required to be made by it pursuant to this Agreement (any such Lender, a "Non-Funding Lender"), then such Non-Funding Lender shall use reasonable best efforts to find a replacement bank, financial institution, trust, fund or other entity ("Replacement Lender") to assume such Non-Funding Lender's obligations hereunder. Upon finding such Replacement Lender, and upon notice to the Borrower and the Administrative Agent, such Non-Funding Lender shall assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to such Replacement Lender, which shall assume such obligations.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender hereunder, then the following provisions shall apply for so long as such Defaulting Lender is a Defaulting Lender:

(a) commitment fees shall cease to accrue on the unused Commitments of such Defaulting Lender pursuant to Section 2.11;

(b) the Commitment and Credit Exposure of such Defaulting Lender shall be disregarded for purposes of any determination of whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02); provided that this clause (b) shall not apply in the case of any waiver, amendment or modification requiring the consent of all Lenders or each Lender affected thereby;

(c) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender) shall, in lieu of being distributed to such Defaulting Lender, be applied in the following order of priority: (i) to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent, (ii) to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder, (iii) to cash collateralize the Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with this Section 2.20, (iv) to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, (v) if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section 2.20, (vi) to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or Issuing Bank against such Defaulting Lender as a result of such Defaulting Lenders' breach of its obligations under this Agreement, (vii) so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, and any amounts remaining after application thereof by the Administrative Agent as specified in this paragraph (c) shall be distributed to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Article IV were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.20(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) if any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Credit Exposure to exceed its Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent cash collateralize for the benefit of the Issuing Banks only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.04(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.11(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.11(a) and (b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clauses (i) or (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.11(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks until and to the extent that such LC Exposure is reallocated and/or cash collateralized.

(e) so long as such Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein)

(f) the Borrower may, upon notice to a Defaulting Lender and the Administrative Agent (which shall promptly notify the Lenders thereof), terminate the Commitments of such Defaulting Lender and in such event the provisions of Section 2.20(c) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) the Borrower may not terminate such Commitments if (A) an Event of Default has occurred or is continuing or (B) after giving effect to such termination, as applicable, (x) the Total Credit Exposure would exceed the total Commitments or (y) the total Loans would exceed the total Commitments and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent or any Lender may have against such Defaulting Lender.

(g) In the event that the Administrative Agent, each Issuing Bank and the Borrower agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then, with the consent of the Borrower, the LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders or take such other actions as the Administrative Agent shall determine to be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage whereupon such Lender will cease to be a Defaulting Lender; provided that no

adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

The rights and remedies against a Defaulting Lender under this Section 2.20 are in addition to other rights and remedies that the Borrower may have against such Defaulting Lender.

SECTION 2.21. Benchmark Replacement Setting.

(a) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, the Administrative Agent and the Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.21(a) will occur prior to the applicable Benchmark Transition Start Date.

(ii) No Swap Agreement shall constitute a "Loan Document" for purposes of this Section 2.21.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.21(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.21, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.21.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including Term SOFR or EURIBOR) and

either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) **Benchmark Unavailability Period.** Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a given Benchmark, (i) the Borrower may revoke any pending request for Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans, or a SONIA Borrowing of, conversion to or continuation of SONIA Loans, in each case, to be made, converted or continued during any Benchmark Unavailability Period denominated in the applicable Agreed Currency and, failing that, (A) in the case of any request for any affected Term Benchmark Borrowing in Dollars, if applicable, the Borrower will be deemed to have converted any such request into a request for an ABR Borrowing or conversion to ABR Loans in the amount specified therein and (B) in the case of any request for any affected Term Benchmark Borrowing or SONIA Borrower, in each case, in a Foreign Currency, if applicable, then such request shall be ineffective and (ii)(A) any outstanding affected Term Benchmark Loans denominated in Dollars, if applicable, will be deemed to have been converted into ABR Loans immediately and (B) any outstanding affected Term Benchmark Loans or SONIA Loans, in each case, denominated in a Foreign Currency, at the Borrower's election, shall either (I) be converted into ABR Loans denominated in Dollars (in an amount equal to the equivalent thereof in Dollars of such Foreign Currency) immediately or, in the case of Term Benchmark Loans, at the end of the applicable Interest Period or (II) be prepaid in full immediately or, in the case of Term Benchmark Loans, at the end of the applicable Interest Period; provided that with respect to any SONIA Loan, if no election is made by the Borrower by the date that is three (3) Business Days after receipt by the Borrower of such notice, the Borrower shall be deemed to have elected clause (I) above; provided, further that, with respect to any Term Benchmark Loan, if no election is made by the Borrower by the earlier of (x) the date that is three (3) Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable Term Benchmark Loan, the Borrower shall be deemed to have elected clause (I) above. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.15. During a Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for any then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark that is the subject of such Benchmark Unavailability Period or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

SECTION 2.22. **Illegality.** If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SONIA, Daily Simple SONIA, the EURIBOR Rate, the Adjusted EURIBOR Rate, the Term SOFR or the Adjusted Term SOFR Rate, or to determine or charge interest based upon SONIA, Daily Simple SONIA, the EURIBOR Rate, the Adjusted EURIBOR Rate, Term SOFR or the Adjusted Term SOFR Rate, or, with respect to any Term Benchmark Loan, any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, any applicable

Agreed Currency in the applicable offshore interbank market for the applicable Agreed Currency, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent) (an “Illegality Notice”), (a) any obligation of such Lender, having delivered an Illegality Notice to the Borrower, to make SONIA Loans or Term Benchmark Loans, as applicable, shall be suspended, and any such Loan shall be made as an ABR Loan denominated in Dollars (in an amount equal to the Dollar Amount of such Foreign Currency) and (b) if necessary to avoid such illegality, the Administrative Agent shall compute the ABR without reference to clause (c) of the definition of “Alternate Base Rate”, in each case until such affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from such affected Lender (with a copy to the Administrative Agent), prepay or, if applicable, (i) convert all Term Benchmark Loans of such Lender denominated in Dollars to ABR Loans or (ii) convert all SONIA Loans or Term Benchmark Loans of such Lender denominated in an affected Foreign Currency to ABR Loans denominated in Dollars (in an amount equal to the Dollar Amount of such Foreign Currency) (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the ABR without reference to clause (c) of the definition of “Alternate Base Rate”), (A) with respect to Term Benchmark Loans, on the Interest Payment Date therefor, if all affected Lenders may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such Term Benchmark Loans to such day or (B) with respect to SONIA Loans, immediately. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.15.

Article III

Representations and Warranties

The Borrower represents and warrants to the Lenders as of the Effective Date and thereafter as of each date required by Section 4.02 that:

SECTION 3.01. Organization; Powers. Each of the Borrower and its Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except, in each case, where the failure to be so qualified and/or in good standing, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party’s corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, and except where such failure to obtain or make such consent, approval, registration, filing or other action would not reasonably be expected to have a Material Adverse Effect, (b) will not violate any applicable material law or material regulation or any material order of any Governmental Authority, (c) will not violate the charter, by-laws or equivalent organizational documents of the Borrower or any of its Restricted

Subsidiaries that is a Significant Subsidiary, (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Restricted Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Restricted Subsidiaries, except where any such violations or defaults would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Restricted Subsidiaries that is a Significant Subsidiary.

SECTION 3.04. Financial Statements; Financial Condition; No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2021, reported on by PricewaterhouseCoopers LLP, independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP.

(b) On the Effective Date, (i) the sum of the fair value of the assets, at a fair valuation, of the Borrower and its Subsidiaries (taken as a whole) will exceed their respective debts, (ii) the sum of the present fair saleable value of the assets of the Borrower and its Subsidiaries (taken as a whole) will exceed their respective debts, (iii) the Borrower and its Subsidiaries (taken as a whole) have not incurred and do not intend to incur, and do not believe that they will incur, debts beyond their ability to pay such debts as such debts mature and (iv) the Borrower and its Subsidiaries (taken as a whole) will have sufficient capital with which to conduct their respective businesses. For purposes of this Section 3.04(b), "debt" means any liability on a claim, and "claim" means right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances available at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(c) Since December 31, 2021, there has been no event, development or circumstance that has had or would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 3.05. Litigation and Environmental Matters. (a) Other than the Disclosed Matters, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Restricted Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.

(b) Neither the Borrower nor any of its Restricted Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability except, in each case, for the Disclosed Matters and with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Compliance with Laws and Agreements. Each of the Borrower and its Restricted Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding

upon it or its property, except (a) in such instances where any alleged non-compliance is being contested in good faith by appropriate proceedings diligently conducted or (b) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.07. Investment Company Status. The Borrower is not an "investment company" as defined in the Investment Company Act of 1940.

SECTION 3.08. Taxes. Each of the Borrower and its Restricted Subsidiaries has timely filed or caused to be filed all material Tax returns and reports required to have been filed and has paid or caused to be paid all material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. If all of the Plans were terminated (disregarding any Plans with surpluses), the unfunded liabilities with respect to the Plans, individually or, in the event there is more than one Plan, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. Disclosure. (a) No written information furnished (other than projected financial information) by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) when taken as a whole and together with the Borrower's filings with the SEC, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained therein taken as a whole, in the light of the circumstances under which they were made, not materially misleading; provided that with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that the actual results may vary from the projected financial information).

(b) As of the Effective Date, to the knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.11. Federal Regulations. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

SECTION 3.12. Use of Proceeds. The proceeds of the Loans and Letters of Credit shall be used for general corporate purposes or for any other purpose not prohibited by this Agreement; provided that the Borrower and its Restricted Subsidiaries shall not use, loan, contribute, or otherwise make such proceeds available, directly or knowingly indirectly, (i) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money, or anything else of value, to any

Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in each case, to the extent prohibited for a Person required to comply with Sanctions or (iii) in any other manner that would cause any party to this Agreement to be in violation of any Anti-Corruption Laws, any Anti-Money Laundering Laws or Sanctions.

SECTION 3.13. Anti-Corruption Laws. Since January 1, 2018, the Borrower has implemented, maintains in effect and enforces policies and procedures reasonably designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers, and, to its knowledge, its employees, agents and Affiliates with Anti-Corruption Laws.

(a) The Borrower, its Subsidiaries and their respective directors, officers, and, to its knowledge, its employees, agents and Affiliates are in compliance with Anti-Corruption Laws and applicable Anti-Money Laundering Laws and have not engaged, since January 1, 2018, in (i) using any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) making or taking an unlawful act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or -controlled entity or of a public international organization, or any person acting for or on behalf of any of the foregoing, or any political party or party official or candidate for political office or (iii) making, offering, agreeing, requesting or taking an act in furtherance of any unlawful bribe or other unlawful benefit, including any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit, in each case of sub-clauses (i), (ii) and (iii) of this clause (a), in violation of the Anti-Corruption Laws.

SECTION 3.14. Sanctions. The Borrower has implemented, maintains in effect and enforces policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, and, to its knowledge, employees, agents or Affiliates with applicable Sanctions.

(a) None of the Borrower or any of its Subsidiaries or any of their respective directors, officers or, to its knowledge, employees, agents or Affiliates that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

(b) The Borrower, its Subsidiaries and their respective directors, officers, employees and, to its knowledge, agents and Affiliates are (i) in compliance with applicable Sanctions, (ii) not engaged in, directly or knowingly indirectly, any dealings or transactions with or benefitting any person or entity that at the time of the dealing or transaction is or was a Sanctioned Person or in, with, or benefitting any Sanctioned Country, in each case, to the extent prohibited for a Person required to comply with Sanctions at the time of the dealing or transaction and (iii) not the target of a governmental investigation relating to Sanctions nor have received notice of, or otherwise become aware of, any claim, action, suit, or proceeding, or investigation, or inquiry, formal or informal, against it with respect to Sanctions.

SECTION 3.15. Affected Financial Institutions. The Borrower is not an Affected Financial Institution.

SECTION 3.16. Plan Assets; Prohibited Transactions. The Borrower is not an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations). Neither the execution, delivery or performance of the transactions contemplated under this Agreement, including the making of any Loan hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or

Section 4975 of the Code, assuming no portion of the Loan is or will be funded (initially or through participation, assignment, transfer or securitization) with plan assets of any Benefit Plan.

SECTION 3.17. Employment and Labor Relations. As of the Effective Date, neither the Borrower nor any of its Restricted Subsidiaries is a party to any collective bargaining agreement or other labor contract applicable to the Borrower's or any of its Restricted Subsidiaries' employees other than in jurisdictions where regulations mandate employee participation in industrial collective bargaining agreements and works councils with certain consultation (including potential approval, co-determination and information) rights with respect to the relevant entity's operations. As of the Effective Date, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (i) there are no strikes, slowdowns, lock-outs, work stoppages or, to the knowledge of any Responsible Officer of the Borrower, threatened in writing against the Borrower or any of its Restricted Subsidiaries, (ii) since January 1, 2020, the Borrower and its Restricted Subsidiaries have been in compliance with the US federal Fair Labor Standards Act of 1938, as amended, or any other applicable laws, regulations or legal requirements dealing with wage and hour matters with respect to the Borrower or any of its Restricted Subsidiaries and (iii) any individual who performs services for the Borrower or any of its Restricted Subsidiaries who is not treated as an employee of the Borrower or such Restricted Subsidiary for any purpose, including income tax, withholding and remittances purposes, has been properly classified as a non-employee contractor.

SECTION 3.18. Intellectual Property. Each of the Borrower and each of its Restricted Subsidiaries (i) owns or has the right to use all patents, trademarks, permits, domain names, service marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases), formulas, and other intellectual property rights (collectively, "Intellectual Property"), and (ii) has obtained assignments of all leases, licenses and other rights of whatever nature, in each case that are reasonably necessary for the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and without any known conflict with the rights of others, except where the failure to own such Intellectual Property or obtain waivers of such conflicts would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Article IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the first date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include any Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received customary favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Loan Parties. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Loan Parties, the authorization of the Transactions and any other legal matters relating to the Loan Parties, this Agreement or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by an Authorized Officer of the Borrower, certifying that, on and as of the Effective Date, (i) the representations and warranties contained in Article III and in each other Loan Document are true and correct in all material respects on and as of the Effective Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) no Default or Event of Default exists, or would result from the Transactions or from the application of the proceeds thereof and (iii) compliance with Section 6.01 hereof.

(e) The Administrative Agent, the Lenders and the Lead Arrangers shall have received all fees and other amounts due and payable on or prior to the Effective Date for which invoices have been presented at least one (1) Business Day prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(f) (i) The Borrower shall have paid in full all of its obligations under the Existing Credit Agreement, (ii) the Existing Credit Agreement (and the commitments thereunder) shall have terminated and be of no further force and effect, (iii) all guarantees and security interests granted in connection with the Existing Credit Agreement shall have been terminated and released (or arrangements reasonably satisfactory to the Administrative Agent shall have been made with respect to such termination and release) (each of the foregoing clauses (i), (ii) and (iii), collectively, the "Payoff") and (iv) the Administrative Agent shall have received evidence satisfactory to it that the Payoff has occurred or shall occur substantially simultaneously with the Effective Date.

(g) (i) The Administrative Agent shall have received all documentation and other information reasonably requested by the Administrative Agent or any Lender pursuant to applicable "know your customer" and Anti-Money Laundering Laws, including the Act; provided that such documentation has been requested at least five (5) Business Days prior to the Effective Date and (ii) each Lender that has reasonably requested a Beneficial Ownership Certification shall, to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, have received a Beneficial Ownership Certification (provided that upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(h) The Administrative Agent shall have received the audited consolidated financial statements and unaudited interim financial statements of the Borrower for the three most recent fiscal years and the most recent interim period, as applicable, ended prior to the Effective Date as to which such financial statements are available, in each case, which will be deemed delivered to the Administrative Agent when filed by the Borrower with the SEC on Form 10-K or Form 10-Q, as applicable.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 3:00

p.m., New York City time, on March 31, 2023 (and in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time). For purposes of determining compliance with the conditions specified in this Section 4.01, each of the Lenders and Issuing Banks party hereto as of the Effective Date shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to such party unless the Administrative Agent shall have received written notice from such party prior to the Effective Date specifying its objection thereto.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan under the Facility on the occasion of any Borrowing (other than any conversion to or continuation of any Loan), and of each Issuing Bank to issue, amend to increase the amount thereof, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement (except the representations set forth in Sections 3.04(c) and 3.05) shall be true and correct in all material respects on and as of the date of such Borrowing; provided that any representation or warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (except the representations set forth in Sections 3.04(c) and 3.05) as so qualified on such respective dates.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

Each Borrowing (other than any conversion or continuation of any Loan) and each issuance, amendment to increase the amount thereof, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 4.02(a) and (b).

Notwithstanding the foregoing, these conditions shall not apply to any borrowing of an ABR Loan under the Facility in connection with the repayment of a Loan under Section 2.13.

Article V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, and all Letters of Credit shall have expired or terminated (other than those for which accommodations reasonably acceptable to the applicable Issuing Bank have been made) without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements; Other Information. The Borrower will furnish to the Administrative Agent:

(a) within ninety (90) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP;

(b) within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations and stockholders' equity as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Authorized Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clauses (a) or (b) above, a certificate of an Authorized Officer of the Borrower, substantially in the form of Exhibit B hereto (or such other form as may be reasonably acceptable to the Administrative Agent), (x) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (y) setting forth reasonably detailed information demonstrating compliance with Section 6.01; and

(d) within a reasonable time following any reasonable written request therefor by the Administrative Agent or any Lender, (x) such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of this Agreement and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and Anti-Money Laundering Laws, including the Act and the Beneficial Ownership Regulation. Notwithstanding the foregoing, neither the Borrower nor any Subsidiary shall be required to disclose or permit inspection or discussion of, any document, information or other matter (i) that constitutes non-registered intellectual property, trade secrets, proprietary information, or strategy level detail with respect to operational performance (except insofar as it relates to determining compliance by the Borrower or any Subsidiary with the requirements of this Agreement), (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Subject to the next succeeding sentence, information delivered pursuant to this Section 5.01 to the Administrative Agent shall promptly be made available by the Administrative Agent to the Lenders by posting such information on the DebtDomain website on the Internet at <http://www.debtomain.com>. Information delivered pursuant to this Section 5.01 may also be delivered by electronic communication pursuant to procedures approved by the Administrative Agent pursuant to Section 9.01(b) hereto. Notwithstanding anything herein to the contrary, financial information required to be delivered pursuant to Sections 5.01(a) and (b) (in each case, solely to the extent such financial information is included in materials filed with the SEC) shall be deemed to have been delivered to the Administrative Agent on the date on which such information is available via the EDGAR system of the SEC on the Internet; provided that, in each case, the Borrower shall (i) to the extent such information required to be provided under Section 5.01(a) is not included in materials filed with the SEC, separately deliver to the Administrative Agent an audit report and the opinion of PricewaterhouseCoopers LLP or other independent certified public accountants of national recognized standing satisfying the requirements set forth in Section 5.01(a) if such information is not available via the EDGAR system of the SEC on the Internet, promptly deliver email copies of any such documents to the Administrative Agent if the Administrative Agent or any Lender requests the Borrower to furnish such copies until written notice to cease delivering such copies is given by the Administrative Agent

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent prompt written notice of the following, upon becoming aware of such event:

(a) the occurrence of any Default;

(b) the occurrence of any event, development or circumstance that has had or would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect;

(c) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Restricted Subsidiary as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, that would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect; and

(d) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section 5.02 (other than in the case of clause (d)) shall be accompanied by a statement of an Authorized Officer or other representative of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. The Administrative Agent shall promptly deliver such notice to the Lenders.

SECTION 5.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (other than with respect to the maintenance of the existence of the Borrower) and, in its commercially reasonable business judgment, the rights, licenses, permits, privileges and franchises material to the conduct of its business on a consolidated basis except to the extent that failure to do so would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The Borrower will, and will cause each of its Restricted Subsidiaries to, pay its obligations (other than in respect of any Indebtedness), including Tax liabilities, that, if not paid, would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Restricted Subsidiaries to, (a) keep and maintain all tangible property material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in good working order and condition, ordinary wear and tear excepted except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect and (b) maintain insurance (including self-insurance) as the Borrower believes (in its good faith judgment) to be reasonable and prudent.

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account sufficient to permit the preparation of consolidated financial statements in accordance with GAAP. The Borrower will, and will cause each of its Restricted Subsidiaries to, permit any representatives reasonably acceptable to the Borrower designated by the Administrative Agent or any Lender, upon reasonable prior notice, at their

own expense (unless a Default has occurred and is continuing) to visit and inspect its properties during normal business hours, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times not to exceed, for all such designated representatives collectively, one time in any fiscal year (with visits by designated representatives of the Lenders to be coordinated through the Administrative Agent) (provided that such limitation shall not apply at any time a Default has occurred and is continuing).

SECTION 5.07. Compliance with Laws. The Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except (a) in such instances where any alleged non-compliance is being contested in good faith by appropriate proceedings or (b) where the failure to do so would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

SECTION 5.08. Anti-Corruption Laws and Sanctions. The Borrower will maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers, and, to its knowledge, its employees, agents and Affiliates with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.09. Further Assurances.

(a) If (I)(A) the Borrower or any Loan Party establishes, creates or acquires after the Effective Date any direct wholly-owned Domestic Subsidiary (or any existing wholly-owned Domestic Subsidiary becomes a direct wholly-owned Domestic Subsidiary of the Borrower) other than an Excluded Subsidiary or (B) any direct wholly-owned Domestic Subsidiary ceases to be an Excluded Subsidiary or (II) any direct wholly-owned Domestic Subsidiary (other than an Excluded Subsidiary) becomes a guarantor with respect to any Specified Borrower Indebtedness, then (x) with respect to the foregoing clause (I), the Borrower will promptly notify the Administrative Agent of such occurrence and within sixty (60) days (as such date may be extended from time to time by the Administrative Agent in its sole discretion) after such date or (y) with respect to the foregoing clause (II), on such date on which such direct wholly-owned Domestic Subsidiary becomes a guarantor with respect to such Specified Borrower Indebtedness, in each case, such wholly-owned Domestic Subsidiary shall (i) become party to the Guarantee Agreement, by executing and delivering to the Administrative Agent a counterpart of the Guarantee Agreement or a counterpart of a Joinder Agreement (as defined in the Guarantee Agreement) (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Borrower), as applicable and (ii) execute and deliver, or cause to be executed and delivered, all other relevant documentation of the type described in Sections 4.01(b) and (c) with respect to such direct wholly-owned Domestic Subsidiary.

(b) If, as of the last day of any fiscal quarter of the Borrower, the aggregate consolidated total assets (excluding intercompany assets) of all Immaterial Subsidiaries (which for purposes of this Section 5.09(b) does not include any Excluded Subsidiaries that are not Immaterial Subsidiaries) exceeds 12.5% of Consolidated Total Assets (as set forth in the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP) or the aggregate consolidated total revenues of all Immaterial Subsidiaries exceeds 12.5% of the consolidated total revenues of the Borrower and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP) then, within ninety (90) days after the end of any such fiscal quarter (or, if such fiscal quarter is the fourth fiscal quarter of the Borrower, within one hundred and twenty (120) days thereafter) (as either such date may be extended by the Administrative Agent in its reasonable discretion)), the Borrower shall cause one or more Immaterial Subsidiaries to take the actions specified in

Section 5.09(a)(i) and (ii) above; provided, however, such actions shall only be required to the extent that, after giving effect to such actions, the aggregate consolidated total assets (excluding intercompany assets) of all Immaterial Subsidiaries do not exceed 12.5% of Consolidated Total Assets and the aggregate consolidated total revenues of all Immaterial Subsidiaries do not exceed 12.5% of consolidated total revenues of the Borrower and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

SECTION 5.10. ERISA.

(a) The Borrower will deliver to the Administrative Agent (in sufficient copies for all Lenders, if the Administrative Agent so requests):

(i) promptly and in any event within fifteen (15) days after receiving a request from the Administrative Agent a copy of the most recent IRS Form 5500 (including the Schedule B) with respect to a Plan;

(ii) promptly and in any event within thirty (30) days after any Responsible Officer of the Borrower knows that any ERISA Event has occurred that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a certificate of an Authorized Officer of the Borrower describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by any Loan Party, any Subsidiary of the Borrower or, to the Borrower's knowledge, any ERISA Affiliate from the PBGC or any other governmental agency with respect thereto; provided that in the case of such ERISA Events under paragraphs (b), (c) and (d) of the definition thereof, the 30-day notice period set forth above shall be a 10-day period, and, in the case of such ERISA Events under paragraphs (g) and (i) of the definition thereof, in no event shall notice be given later than ten (10) days after the occurrence of any such ERISA Event; and

(iii) promptly, and in any event within thirty (30) days, after a Responsible Officer of the Borrower, becomes aware that there has been (A) an increase in the unfunded liabilities with respect any Plan (taking into account only Plans with positive unfunded liabilities) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (B) an increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential withdrawal liability under Section 4201 of ERISA, if the Loan Parties, the Subsidiaries of the Borrower and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (C) that any contribution required to be made with respect to a Foreign Pension Plan has not been timely made, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect or (D) the adoption of any amendment to a Plan which results in an increase in contribution obligations of any Loan Party or any Subsidiary that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a detailed written description thereof from an Authorized Officer of the Borrower.

(b) The Borrower and each of its applicable Subsidiaries shall ensure that all Foreign Pension Plans administered by it obtains or retains (as applicable) registered or tax-qualified, as applicable, status under and as required by applicable law and is administered in a timely manner in all respects in compliance with all applicable laws and the terms of each relevant Foreign Pension Plans, except where the failure to do any of the foregoing, either individually or in the aggregate, would not be reasonably likely to result in a Material Adverse Effect.

SECTION 5.11. Use of Proceeds. The Borrower will use the proceeds of the Loans and Letters of Credit only as provided in Section 3.12.

Article VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated (other than those for which accommodations acceptable to the applicable Issuing Bank have been made), in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Minimum Liquidity. The Borrower will not at any time permit the Consolidated Liquidity to be less than \$1,000,000,000.

SECTION 6.02. Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary (other than the proceeds and products thereof and accessions and improvements thereto) and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any accrued interest, premiums or fees payable by the Borrower or such Restricted Subsidiary in respect of such obligations;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof prior to the time such Person becomes a Restricted Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary (other than the proceeds and products thereof and accessions and improvements thereto) and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any accrued interest, premiums or fees payable by the Borrower or such Restricted Subsidiary in respect of such obligations;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; provided that (i) such security interests and the Indebtedness secured thereby are incurred prior to or within 365 days after such acquisition or the completion of such construction or improvement and (ii) such security interests shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary (other than the proceeds and products thereof and accessions and improvements thereto, except that individual financings provided by a Person or its Affiliates may be cross collateralized to other financings provided by such Person or its Affiliates; provided that such other financings shall (i) have a similar purpose to such individual financing and (ii) be part of a series of financings related to such individual financing);

(e) Liens securing obligations of the Specified Tesla Subsidiaries;

(f) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks or other financial institutions with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements;

(g) Liens granted in the ordinary course of business on insurance policies, proceeds thereof and the unearned portion of insurance premiums with respect thereto securing the financing of the unpaid cost of the insurance policies;

(h) customary Liens granted in favor of a trustee pursuant to an indenture relating to Indebtedness not prohibited by this Agreement to the extent such Liens (i) secure only customary compensation, indemnification and reimbursement obligations owing to such trustee under such indenture and any agreements entered into by such trustee (as trustee or collateral agent) in connection therewith and (ii) are limited to the cash or other collateral held by such trustee (excluding cash held in trust for the payment of such Indebtedness);

(i) customary Liens securing repurchase obligations in the ordinary course of business;

(j) Liens on Used Motor Vehicles and related assets (such as proceeds and documents of title in respect thereof, that in the reasonable opinion of the Borrower are customary for financing transactions related to such assets), in each case securing Indebtedness permitted by Section 6.08(k);

(k) Liens of the purchaser or any of its Affiliates on Environmental Attributes and their related intangible rights in connection with the sale of such Environmental Attributes;

(l) Liens securing Indebtedness permitted under Section 6.08(l); provided that such Lien extends only to the real property, and any buildings, structures, parking areas, fixtures or other improvements thereon and other property of the type customarily described in a mortgage or deed of trust, comprising the Manufacturing Facility constructed, improved or repaired with the proceeds of such Indebtedness and, if applicable, the Equity Interests in the Restricted Subsidiary that has title to the financed Manufacturing Facility and whose assets consist solely of such related assets;

(m) Liens on Rental Account Assets and related assets;

(n) Liens on Used Motor Vehicles and related assets (such as proceeds and documents of title in respect thereof, that in the reasonable opinion of the Borrower are customary for financing transactions related to such assets);

(o) Liens on assets owned by a Securitization Subsidiary which is a Restricted Subsidiary granted in connection with a Securitization Transaction; and

(p) other Liens securing obligations of the Borrower and the Restricted Subsidiaries that do not in the aggregate at any time exceed 7.5% of Consolidated Net Tangible Assets.

SECTION 6.03. Fundamental Changes. The Borrower will not, and will not permit any Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, license, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Restricted Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Restricted Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Person (other than the Borrower) may merge into any Restricted Subsidiary in a transaction in which the surviving entity is a Restricted Subsidiary, (iii) any Restricted Subsidiary may sell, transfer, license, lease or otherwise dispose of its assets to the Borrower or to another Restricted Subsidiary, (iv) any Restricted Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders, (v) any Restricted Subsidiary may be sold or otherwise disposed of, and any Restricted Subsidiary may merge or consolidate with any other Person or sell, lease, license or otherwise dispose of, all or substantially all of its assets so long as, in each case, such sales, transfers, licenses, leases or disposals, in the aggregate, do not constitute all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole and (vi) the Borrower or any Restricted Subsidiary may sell, transfer, license, lease or otherwise dispose of its assets to a Securitization Subsidiary in connection with a Securitization Transaction so long as such sales, transfers, licenses, leases or disposals, in the aggregate, do not constitute all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole. Notwithstanding anything to the contrary in this Agreement, the Borrower shall not reorganize under the laws of any jurisdiction other than a state of the United States of America.

SECTION 6.04. Clauses Restricting Subsidiary Distributions. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary of the Borrower to (a) make Restricted Payments in respect of any capital stock of such Restricted Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Restricted Subsidiary of the Borrower, other than subordination of Indebtedness or subrogation rights in connection with permitted guaranties, (b) make loans or advances to, or other investments in, the Borrower or any other Restricted Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Restricted Subsidiary of the Borrower, except for such encumbrances or restrictions (x) entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business which the Borrower has reasonably determined in good faith will not materially impair the Borrower's ability to make payments under this Agreement when due (including on the Maturity Date) or (y) existing under or by reason of:

- (i) any restrictions with respect to a Restricted Subsidiary or its assets imposed pursuant to an agreement that has been entered into in connection with the disposition of capital stock or assets of such Subsidiary;
- (ii) any restrictions, limitations, conditions and prohibitions under or imposed by any indenture, agreement, instrument or other contractual arrangement in effect on the Effective Date (including this Agreement) and any similar indentures, agreements or instruments to the extent such restrictions, limitations, conditions and prohibitions are customary or reasonable or otherwise no more restrictive, taken as a whole, than those set forth in such existing indentures, agreements or instruments (including this Agreement), in each case as reasonably determined by the Borrower;
- (iii) any agreements governing any purchase money Liens, Capital Lease Obligations or other Liens otherwise permitted hereby to the extent any prohibition or limitation restricts Liens on the assets subject to such Lien;
- (iv) any prohibitions or conditions under applicable law, rule or regulation or contained in any Loan Document;
- (v) customary provisions restricting assignment of any licensing agreement (in which the Borrower or any of its Restricted Subsidiaries is the licensee) or any other contract entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;
- (vi) any agreement in effect at the time a Person becomes a Restricted Subsidiary of the Borrower, so long as such agreement was not entered into in connection with or in contemplation of such Person becoming a Subsidiary of the Borrower;
- (vii) any provisions restricting assignment of any agreement entered into by a Restricted Subsidiary in the ordinary course of business and consistent with past practices;
- (viii) any provisions restricting subletting or assignment of any lease governing a leasehold interest of a Restricted Subsidiary entered into in the ordinary course of business and consistent with past practices;
- (ix) customary provisions in partnership agreements, limited liability company governance documents, joint venture agreements and other similar agreements that restrict the transfer of assets of, or ownership interests in, the relevant partnership, limited liability company, joint venture or similar Person;

(x) provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Equity Interests of a Person other than on a pro rata basis;

(xi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(xii) customary net worth or similar financial maintenance provisions contained in real property leases entered into by any Restricted Subsidiary;

(xiii) arrangements with any Governmental Authority imposed on any Foreign Subsidiary in connection with governmental grants, financial aid, tax holidays or similar benefits;

(xiv) customary restrictions created in connection with any Securitization Transaction; or

(xv) customary restrictions, limitations, conditions or prohibitions applicable to the Specified Tesla Subsidiaries.

SECTION 6.05. Lines of Business. The Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by the Borrower and the Restricted Subsidiaries, taken as a whole, on the Effective Date and other business activities which are extensions thereof or otherwise incidental, synergistic, reasonably related, or ancillary to any of the foregoing (and non-core incidental businesses acquired in connection with any acquisition).

SECTION 6.06. Transactions with Affiliates. (a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease or otherwise transfer any material property or material assets to, or purchase, lease or otherwise acquire any material property or material assets from, or otherwise engage in any other material transactions with, any of its Affiliates (other than the Borrower or any other Restricted Subsidiary to the extent such transaction does not otherwise involve any other Affiliate), unless such transaction is (x) upon fair and reasonable terms no less favorable in all material respects to the Borrower or the relevant Restricted Subsidiary, as applicable, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate or (y) otherwise expressly permitted hereunder (including Standard Securitization Undertakings); provided that nothing in this Section 6.06 prohibit: (i) any Affiliate who is an individual from serving as a director, officer or employee of the Borrower or any of its Restricted Subsidiaries and receiving reasonable compensation for his or her services in such capacity; (ii) so long as the Borrower is publicly held, any transaction that is approved in accordance with the then-applicable related party transaction (or similar) policy of the Borrower, (iii) the issuance of common stock and the making of any Restricted Payment in the ordinary course of business or (iv) the payment of customary fees, indemnities and reimbursements paid to officers and directors of the Borrower and its Restricted Subsidiaries.

(b) The Borrower shall not, and shall not permit any Restricted Subsidiary that is not a Specified Tesla Subsidiary to, sell, transfer, license, lease or otherwise dispose of any of its material assets or material property to a Specified Tesla Subsidiary unless such sale, transfer, license, lease or other disposition is made for bona fide business purposes related to the business of the applicable Specified Tesla Subsidiary.

SECTION 6.07. Use of Proceeds. The Borrower will not, and will not permit any of its Subsidiaries to, use directly or indirectly the proceeds of any Loan or Letter of Credit, or lend, contribute or otherwise make available such proceeds to any Subsidiary or any other Person (a) in furtherance of an

offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in material violation of any applicable Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (c) in any other manner that would result in a violation of any Anti-Corruption Laws, any Anti-Money Laundering Laws or applicable Sanctions by any party to this Agreement.

SECTION 6.08. Subsidiary Indebtedness. The Borrower will not permit any of its Restricted Subsidiaries to directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness existing on the date hereof and set forth in Schedule 6.08 and amendments, extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof);

(b) Indebtedness of any Restricted Subsidiary to the Borrower or any other Restricted Subsidiary;

(c) Guarantees by any Restricted Subsidiary of Indebtedness of any other Restricted Subsidiary;

(d) Capital Lease Obligations and other Indebtedness incurred to finance the purchase price or improvement cost incurred or assumed in connection with the acquisition, construction or improvement of fixed capital or capital assets and any amendments, extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction fees, costs and expenses in connection with such extension, renewal or replacement thereof);

(e) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees, standby and documentary letters of credit and similar obligations, in each case provided in the ordinary course of business;

(f) Indebtedness assumed in connection with an acquisition of the equity interests or the assets of any Person; provided that such Indebtedness (i) exists at the time of the acquisition of such equity interests or assets and (ii) is not created in contemplation of or in connection with the acquisition of such equity interests or assets;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(h) Indebtedness owed in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing-house transfers of funds; provided that such Indebtedness shall be repaid in full within ten Business Days of the incurrence thereof;

(i) Indebtedness in respect of non-speculative Swap Agreements relating to the business or operations of such Subsidiary;

(j) Indebtedness of any Restricted Subsidiary as an account party in respect of letters of credit or letters of guarantee in the ordinary course of business;

(k) Indebtedness of any Restricted Subsidiaries secured by a Lien on Used Motor Vehicles and related assets; provided that such Indebtedness shall not be secured by any assets other than Used Motor Vehicles and other related assets, such as proceeds therefrom and documents of title in respect thereof, that in the reasonable opinion of the Borrower are customary for financing transactions related to such assets; provided, further, that the aggregate principal amount of Indebtedness outstanding at any time pursuant to this clause (l) shall not exceed \$300,000,000;

(l) Indebtedness of any Restricted Subsidiary incurred to provide all or a portion of, or to reimburse any Restricted Subsidiary for expenditures relating to, the cost of construction, repair or improvement of any Manufacturing Facility, including a long-term financing of any Manufacturing Facility;

(m) Indebtedness of any direct or indirect subsidiary of TEO that is (i) a renewal, extension, exchange, replacement or refinancing of Indebtedness outstanding on the Effective Date (plus the sum of (1) accrued and unpaid interest thereon, (2) any prepayment or exchange premium and (3) customary premium, fees and expenses relating to such renewal, extension, exchange, replacement, refinancing or issuance) or (ii) incurred by any special purpose subsidiary of TEO so long as there shall be no recourse to, or obligation of (whether direct, by guarantee or otherwise), the Borrower or any of its Subsidiaries (other than pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with such Indebtedness that in the reasonable opinion of the Borrower are customary for such transactions);

(n) Indebtedness of the Specified Tesla Subsidiaries; and

(o) other Indebtedness in an aggregate principal amount not to exceed at any time outstanding 7.5% of Consolidated Net Tangible Assets.

Article VII

Events of Default

SECTION 7.01. Events of Default. If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Section 7.01) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), Section 5.03 (with respect to the Borrower's existence) or in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clauses (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after the receipt of written notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any of the Restricted Subsidiaries that are Significant Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace period or waiver;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity; provided that this clause (g) shall not apply to (A) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (B) any conversion, repurchase or redemption of any Material Indebtedness scheduled by the terms thereof to occur on a particular date and not subject to any contingent event or condition related to the creditworthiness, financial performance or financial condition of the Borrower or any Restricted Subsidiary that is a Significant Subsidiary or (C) any repurchase or redemption of any Material Indebtedness pursuant to any put option exercised by the holder of such Material Indebtedness; provided that such put option is exercisable at times specified in the terms of the Material Indebtedness and not as a result of any contingent event or condition related to the creditworthiness, financial performance or financial condition of the Borrower or the applicable Restricted Subsidiaries that are Significant Subsidiaries or a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Restricted Subsidiary that is a Significant Subsidiary, or its debts, or of all or substantially all of its assets (or, in the case of the Borrower, a substantial part of its assets), under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary that is a Significant Subsidiary or for all or substantially all of its assets (or, in the case of the Borrower, a substantial part of its assets), and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Restricted Subsidiary that is a Significant Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary that is a Significant Subsidiary, or for all or substantially all of its assets (or, in the case of the Borrower, a substantial part of its assets), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of directly effecting any of the foregoing;

(j) the Borrower or any Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due; provided that this clause (j) shall not apply to Indebtedness that in the aggregate does not constitute Material Indebtedness;

(k) one or more final, non-appealable unsatisfied judgments for the payment of money in an aggregate amount in excess of \$350,000,000 (or, if denominated in another currency, the equivalent thereof in Dollars) not covered by insurance by a financially solvent insurance company that has not denied coverage shall be rendered against the Borrower, any Significant Subsidiary or any combination thereof and the same shall remain unpaid or undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, vacated or bonded pending appeal (it being understood that, notwithstanding the definition of "Default", no "Default" shall be triggered solely by the rendering of such judgment or judgments prior to the commencement of enforcement proceedings or the lapse of such sixty (60) consecutive day period so long as such judgments are capable of satisfaction by payment at any time);

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, results in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) the Guarantee Agreement (or the Guarantees thereunder), once executed, shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert (excluding release of any Guarantor from its guarantee in accordance with the Loan Documents);

then, and in every such event (other than an event with respect to the Borrower described in clauses (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent may with the consent of the Required Lenders, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (iii) require that the Borrower provide cash collateral as required in Section 2.06(j) and (iv) exercise on behalf of itself, the Lenders and the Issuing Banks all rights and remedies available to it, the Lenders and the Issuing Banks under the Loan Documents and applicable law; and in case of any event with respect to the Borrower described in clauses (h) or (i) of this

Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the LC Exposure as provided in clause (iii) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

SECTION 7.02. Application of Payments. Notwithstanding anything herein to the contrary, following the occurrence and during the continuance of an Event of Default, and notice thereof to the Administrative Agent by the Borrower or the Required Lenders, all payments received on account of the Obligations shall, subject to Section 2.20, be applied by the Administrative Agent as follows:

- (i) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to the Administrative Agent (including fees and disbursements and other charges of counsel to the Administrative Agent payable under Section 9.03 and amounts pursuant to Section 2.11(c) payable to the Administrative Agent in its capacity as such);
- (ii) second, to payment of that portion of the Obligations constituting fees, expenses, indemnities and other amounts (other than principal, reimbursement obligations in respect of LC Disbursements, interest and Letter of Credit fees) payable to the Lenders and the Issuing Banks (including fees and disbursements and other charges of counsel to the Lenders and the Issuing Banks payable under Section 9.03) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause (ii) payable to them;
- (iii) third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees and charges and interest on the Loans and unreimbursed LC Disbursements, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause (iii) payable to them;
- (iv) fourth, (A) to payment of that portion of the Obligations constituting unpaid principal of the Loans and unreimbursed LC Disbursements and (B) to cash collateralize that portion of LC Exposure comprising the undrawn amount of Letters of Credit to the extent not otherwise cash collateralized by the Borrower pursuant to Section 2.04 or Section 2.20, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause (iv) payable to them; provided that (x) any such amounts applied pursuant to sub-clause (B) above shall be paid to the Administrative Agent for the ratable account of the applicable Issuing Banks to cash collateralize Obligations in respect of Letters of Credit, (y) subject to Section 2.04 or Section 2.20, amounts used to cash collateralize the aggregate amount of Letters of Credit pursuant to this clause (iv) shall be used to satisfy drawings under such Letters of Credit as they occur and (z) upon the expiration of any Letter of Credit (without any pending drawings), the pro rata share of cash collateral shall be distributed to the other Obligations, if any, in the order set forth in this Section 7.02;
- (v) fifth, to the payment in full of all other Obligations, in each case ratably among the Administrative Agent, the Lenders and the Issuing Banks based upon the respective aggregate amounts of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and
- (vi) finally, the balance, if any, after all Obligations have been paid in full, to the Borrower or as otherwise required by law.

If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired (without any pending drawings), such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Article VIII

The Administrative Agent

SECTION 8.01. Authorization and Action. Each of the Lenders and the Issuing Banks hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender or as an Issuing Bank as any other Lender or Issuing Bank and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.02. Administrative Agent's Reliance; Limitation of Liability, Etc. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02 and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02, or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower),

independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.03. Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this Section 8.03, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint from among the Lenders a successor reasonably acceptable to the Borrower (except that the Borrower's consent shall not be required if an Event of Default has occurred and is continuing). If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (the "Resignation Effective Date"), then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent reasonably acceptable to the Borrower (except that the Borrower's consent shall not be required if an Event of Default has occurred and is continuing) which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (e) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent, and the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender or each Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article VIII and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

SECTION 8.04. Acknowledgements of Lenders and Issuing Banks. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or Issuing Bank and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or Issuing Bank and based on such documents and information

as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

SECTION 8.05. Certain ERISA Matters. Each Lender and each Issuing Bank (x) represents and warrants, as of the date such Person became a Lender or an Issuing Bank party hereto, to and (y) covenants, from the date such Person became a Lender or an Issuing Bank party hereto to the date such Person ceases being a Lender or an Issuing Bank party hereto, for the benefit of, the Administrative Agent, and each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender or such Issuing Bank is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s or such Issuing Bank’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender or such Issuing Bank is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender or such Issuing Bank to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender or such Issuing Bank, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s or such Issuing Bank’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender or such Issuing Bank.

In addition, unless sub-clause (i) in the immediately preceding paragraph is true with respect to a Lender or an Issuing Bank or such Lender or such Issuing Bank has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding paragraph, such Lender or such Issuing Bank further (x) represents and warrants, as of the date such Person became a Lender or an Issuing Bank party hereto, to and (y) covenants, from the date such Person became a Lender or an Issuing Bank party hereto to the date such Person ceases being a Lender or an Issuing Bank party hereto, for the benefit of, the Administrative Agent, and each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent, or any Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender or such Issuing Bank (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement or any documents related to hereto or thereto).

SECTION 8.06. No Fiduciary Duty. The Administrative Agent, and each Lead Arranger hereby informs the Lenders and the Issuing Banks that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or such Issuing Bank or (iii) may receive fees or other payments in connection with the transactions contemplated hereby or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.07. Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank or other recipient, and each of their respective successors and assigns, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 8.07 and held in trust for the benefit of the Administrative Agent, and such Lender or Issuing Bank shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Overnight Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient (and each of their respective successors and assigns) agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Issuing Bank shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.07(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 8.07(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 8.07(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under the immediately preceding clause (a).

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants)

with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(e) Subject to Section 9.04 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(f) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Issuing Bank, to the rights and interests of such Lender or Issuing Bank, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that for the immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment. Notwithstanding anything to the contrary set forth herein, this Section 8.07 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent.

(g) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(h) Each party's obligations, agreements and waivers under this Section 8.07 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Article IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail (or in any other manner approved pursuant to Section 9.01(b)), as follows:

(i) if to the Borrower, to 1 Tesla Road, Austin, TX 78725, Attention: General Counsel, with a copy to 3500 Deer Creek Road, Palo Alto, CA 94304, Attention: Legal, Finance, with a copy to the electronic mail address of the Borrower on file with the Administrative Agent;

with a copy (which shall not constitute notice to any Loan Party) to Skadden, Arps, Slate Meagher & Flom LLP, One Manhattan West, New York, New York 10010, Attention: Steven Messina; Email: steven.messina@skadden.com; Fax: 917-777-3509;

(ii) if to the Administrative Agent, to Citibank Delaware at One Penn's Way, OPS II, New Castle, DE 19720, Attn: Agency Operations, Phone: (302) 894-6010, Fax: (646) 274-5080, Borrower inquiries only: AgencyABTFSupport@citi.com, Borrower notifications: GAgentOfficeOps@citi.com; and

(iii) if to an Issuing Bank, to it at its address (or facsimile number) on file with the Administrative Agent; and

(iv) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or (other than service of process) furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to service of process or to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. All notices concerning Borrowings in the Funding Office or any matter arising in connection therewith will be required to be given at the address set forth in Section 9.01(a)(ii) (in each case, subject to Section 9.01(c)).

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient); and notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and notices or communications posted to an Internet or intranet website to the extent provided in paragraph (b) above shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described above, of notification that such notice or communication is available and identifying the website address therefor; provided that, in each case, if such e-mail is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 9.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders (it being understood that amendments or waivers of conditions precedent, representations, covenants, Defaults or Events of Default shall not constitute an increase in the Commitment of any Lender) or by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect, mistake or inconsistency so long as the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender adversely affected thereby (it being understood that any amendment, modification or waiver to Section 2.12(e) shall not be subject to this clause (ii)), (iii) postpone the final maturity date of any Loan, or postpone the scheduled date of payment of any principal, interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender adversely affected thereby, (iv) change any of the provisions of this Section 9.02

or the definition of "Required Lenders", "Applicable Percentage" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (v) change the last sentence of Section 2.08(c) or change Section 2.17 or Section 7.02 in a manner that would alter the pro rata sharing of payments required thereby among Lenders, without the written consent of each such Lender adversely affected thereby, (vi) release all or substantially all of the (a) Guarantors from their obligations under the Guarantee Agreement or (b) value of the Guarantees in respect of the Obligations, in each case, other than in connection with a transaction or series of transactions not prohibited by this Agreement without the written consent of all Lenders, (viii) add any Foreign Currencies to the Facility without the written consent of each Lender directly affected thereby or (ix) consent to the release, assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement other than in connection with a transaction or series of transactions not prohibited by this Agreement without the written consent of all Lenders; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Banks hereunder without the prior written consent of the Administrative Agent or the applicable Issuing Banks, as the case may be; provided, further, that no such agreement shall amend or modify the provisions of Section 2.04 or any letter of credit application and any bilateral agreement between the Borrower and an Issuing Bank regarding such Issuing Bank's Letter of Credit Commitment or the respective rights and obligations between the Borrower and an Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of such Issuing Bank. Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in sub-clauses (i), (ii) or (iii) of the first proviso of this paragraph (b) and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay, and without duplication, (i) except as otherwise agreed, all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Syndication Agent, the Lead Arrangers and the Documentation Agents, limited, in the case of legal fees, to the reasonable fees, charges and disbursements of a single counsel (and, if reasonably necessary, a single local counsel in each relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions)) for the Administrative Agent, but excluding Taxes, which are covered by Section 2.16, in connection with the administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by an Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Banks, the Syndication Agent, the Documentation Agents and the Lenders (limited, in the case of legal fees, to the reasonable and documented fees and disbursements and other charges of one counsel for all such Persons taken as a whole and, if reasonably necessary, a single local counsel for all such Persons taken as a whole in each relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions) and, solely in the case of an actual or perceived conflict of interest between such Person where the Persons affected by such conflict inform the Borrower of such conflict, one additional counsel and one additional local counsel in each relevant material jurisdiction to each group of affected Persons similarly situated taken as a whole), but excluding Taxes which are covered by Section 2.16, in connection with the enforcement of this Agreement or any agreement or instrument contemplated hereby.

(b) The Borrower shall indemnify the Administrative Agent, each Issuing Bank, each Lender, each Lead Arranger, the Syndication Agent, each Documentation Agent and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each

Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of legal fees, to the reasonable and documented fees and disbursements and other charges of one counsel for all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions) and, solely in the case of an actual or perceived conflict of interest between Indemnitees where the Indemnitees affected by such conflict inform the Borrower of such conflict, one additional counsel and one additional local counsel in each relevant material jurisdiction to each group of affected Indemnitees similarly situated taken as a whole), but excluding Taxes, which are covered by Section 2.16, incurred by or asserted against any Indemnitee arising out of or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto and regardless of whether such claim, litigation, investigation or proceeding is brought by the Borrower or any other party; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or material breach by such Indemnitee or any of its Related Parties of such Person's obligations under this Agreement, or willful misconduct of such Indemnitee or any of its Related Parties and that no Lender shall be entitled to indemnification with respect to any losses, claims, damages, liabilities or related expenses arising out of a dispute between such Lender and its assignees or Participants or solely between Lenders (other than disputes resulting from an act or material omission by the Borrower or any Subsidiary in violation of this Agreement).

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under Sections 9.03(a) or (b), each Lender severally agrees to pay to the Administrative Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) To the extent permitted by applicable law (i) no party hereto shall assert, and each such party hereto hereby waives, any claim against any other party hereto for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) and (ii) no party hereto shall assert, and each such party hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this clause (d)(ii) shall relieve the Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party as set forth in clause (a) above).

(e) All amounts due under this Section 9.03 shall be payable not later than thirty (30) days after written demand therefor, except where the validity or amount thereof is being contested in good faith in appropriate proceedings by the Borrower.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04, (iii) no assignment shall be made to any Defaulting Lender or any of its Affiliates, or any person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (iii) and (iv) no Lender may assign or otherwise transfer its rights or obligations hereunder to the Borrower or any of its Subsidiaries. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 9.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Lead Arrangers, the Syndication Agent, the Documentation Agents, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than (x) a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, (y) the Borrower or its Subsidiaries or (z) any Defaulting Lender or any of its Affiliates) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participation in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower; provided that (i) no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing under clauses (a), (b), (h) or (i) of Section 7.01, any other assignee and (ii) where the consent of the Borrower is required, the Borrower shall be deemed to have consented to any such assignment to which it has not objected in writing within ten (10) Business Days after receipt of notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment to a Lender or an Affiliate of a Lender; and

(C) Each Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 unless each of the Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Borrower shall be required if an Event of Default specified in clauses (a), (b), (h) or (i) of Section 7.01 has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, which fees shall not be payable by the Borrower, except in connection with the replacement of a Lender pursuant to Section 2.19; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to Section 9.04(b)(iv), from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be subject to its obligations under Section 9.12 for a period of one year following the effective date specified in such Assignment and Assumption and shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16, 2.20 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(c).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement,

notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower , any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 9.04(b) and any written consent to such assignment required by Section 9.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (b).

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Banks, sell participations to one or more banks or other entities (other than (x) a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, (y) the Borrower or its Subsidiaries or (z) any Defaulting Lender or Disqualified Institution or any of their respective Affiliates) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to Section 9.04(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 9.03 subject to the requirements and limitations therein, including the requirements under Section 2.16(f) (it being understood that the documentation required under Section 2.16(f) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b). Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.17(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(i) A Participant shall not be entitled to receive any greater payment under Sections 2.14, 2.15, 2.16 or 9.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, except to the extent such entitlement to receive a greater payment results from an adoption of or any change in any requirement of law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(f) as though it were a Lender (it being understood that the documentation required under Section 2.16(f) shall be delivered to the participating Lender).

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and its respective promissory note to secure obligations of such Lender to a Federal Reserve Bank or other central bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) (i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment, or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment or participation in violation of this clause (e)(i) shall not be void, but the other provisions of this clause (e) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Commitment or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders or Issuing Banks by the Borrower, the Administrative Agent or any other Lender or Issuing Bank, (y) attend or participate in meetings attended by the Lenders, Issuing Banks and the Administrative Agent, or (z) access any electronic site established for the Lenders

or the Issuing Banks or confidential communications from counsel to or financial advisors of the Administrative Agent, the Lenders or the Issuing Banks and (B) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent, any Lender or any Issuing Bank to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders or Issuing Banks that are not Disqualified Institutions consented to such matter.

(iv) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution. The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on an Approved Electronic Platform or (B) provide the DQ List to each Lender requesting the same.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the resignation or replacement of the Administrative Agent or a Lender, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) the reductions of the Letter of Credit Commitment of any Issuing Banks constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile (or in any other manner approved pursuant to Section 9.01(b)) shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution”, “signed”, “signature”, and words of like import in this Agreement including any Assignment and Assumption shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually

executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing and the Commitments have been terminated and the Loans then outstanding have been declared due and payable as a result thereof, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender or such Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, such Issuing Bank or such Affiliate shall have made any demand under this Agreement and although such obligations may be unmatured; provided that if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent and the Borrower a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender, such Issuing Bank or their respective Affiliates may have. For the avoidance of doubt, it is understood and agreed that the rights of each Lender, each Issuing Bank, and each of their respective Affiliates under this Section 9.08 shall not apply to amounts held by the Borrower in trust for the benefit of others or in its capacity as a servicer in connection with a Securitization Transaction.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York (whether in tort, contract or otherwise and whether at law or in equity).

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court of the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to enforce a judgment against the Borrower or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in the first sentence of Section 9.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in writing under Section 9.01, but not electronically. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority or Governmental Authority having jurisdiction over such Administrative Agent, Issuing Bank, Lender or its respective Affiliates; provided, however, that with respect to disclosures pursuant to this clause (b) (other than with respect to any audit or examination conducted by any governmental bank regulatory authority exercising examination or regulatory authority unless such audit or examination specifically targets the Borrower or its Subsidiaries, the Transactions or the Information) or the following clause (c) of this Section 9.12, unless prohibited by law or applicable court order, each disclosing Person shall attempt to notify the Borrower of any request by any governmental agency or representative thereof or other Person for disclosure of Information after receipt of such request, and if reasonably practicable and permissible, before disclosure of such Information, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.12, to any credit insurance provider or service provider relating to the Borrower and its obligations, (f) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (g) subject to an agreement containing provisions substantially the same as those of this Section 9.12 to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, or any sub-Participant in, any of its rights or obligations under this Agreement or (ii) any

actual or prospective counterparty (or its advisors) to any swap, derivative transaction or other transaction under which payments are to be made relating to the Borrower and its obligations, this Agreement or payments hereunder, other than, in each case, to any Disqualified Institution, (h) on a confidential basis to, with the consent of the Borrower, (1) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided herein, (i) with the consent of the Borrower, (j) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section 9.12 by the disclosing party or any of its directors, officers, employees and agents, including accountants, legal counsel and other advisors, (2) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower or any of its subsidiaries (other than by any source known by such disclosing party to have an obligation of confidentiality with respect to the disclosed Information) or (3) to the extent pertaining to the existence or terms of this Agreement, market data collectors, similar service providers to the lending industry and service providers to the extent such information is customarily provided to such Persons in connection with the administration of this Agreement and the Commitments hereunder, (k) to the extent applicable and reasonably necessary or advisable, for purposes of establishing a "due diligence" defense in connection with any legal, judicial, administrative proceeding or other process or (l) to the extent that such information is independently developed by such Administrative Agent, Issuing Bank or Lender so long as not based on information obtained in a manner that would otherwise violate this Section 9.12. For the purposes of this Section 9.12, "Information" means all information received from the Borrower or any of its subsidiaries relating to the Borrower or its Subsidiaries or their business, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Each of the Administrative Agent, the Syndication Agent, the Lead Arrangers, the Documentation Agents, the Issuing Banks and the Lenders acknowledge and agree that (i) the Information may include material non-public information concerning the Borrower or a Subsidiary thereof, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information (iii) it will handle such material non-public information in accordance with such compliance procedures and applicable law, including U.S. federal and state securities laws and (iv) it will exercise the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13. USA PATRIOT Act; Beneficial Ownership Regulation. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act and the Beneficial Ownership Regulation.

SECTION 9.14. Agreements Respecting Unrestricted Subsidiaries. If any Unrestricted Subsidiary, in connection with any Indebtedness, Guarantee or other obligations incurred by such Unrestricted Subsidiary, incurs obligations that do not satisfy the requirements for designation as an Unrestricted Subsidiary or otherwise fails to satisfy the requirements for designation as an Unrestricted Subsidiary, the relevant Unrestricted Subsidiary automatically (without any further action by the Borrower) shall be re-designated as a Restricted Subsidiary and each provision of this Agreement applicable to Restricted Subsidiaries shall apply to such Subsidiary.

SECTION 9.15. No Fiduciary Duty. The Administrative Agent, each Lender, each Issuing Bank and their Affiliates (collectively, solely for purposes of this Section 9.15, the “Lenders”), may have economic interests that conflict with those of Borrower. Borrower agrees that nothing in this Agreement or any related documentation or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lenders and Borrower, its stockholders or its affiliates. The Borrower acknowledges and agrees that (i) the transactions contemplated by this Agreement and any related documentation are arm’s length commercial transactions between the Lenders, on the one hand, and Borrower, on the other, (ii) in connection therewith and with the process leading to such transaction each of the Lenders is acting solely as a principal and not the agent or fiduciary of Borrower, its management, stockholders, creditors or any other person, (iii) no Lender has assumed an advisory or fiduciary responsibility in favor of Borrower with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Lender or any of its affiliates has advised or is currently advising Borrower on other matters) or any other obligation to Borrower except the obligations expressly set forth in this Agreement and any related documentation and (iv) Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate. Borrower further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Borrower, in connection with such transaction or the process leading thereto.

SECTION 9.16. Conversion of Currencies.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures in the relevant jurisdiction, the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Borrower in respect of any sum due to any party hereto or any holder of the obligations owing hereunder (the “Applicable Creditor”) shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than the currency in which such sum is stated to be due hereunder (the “Agreement Currency”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrower contained in this Section 9.16 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

SECTION 9.17. Acknowledgement and Consent to Bail-In of Affected Financial Institutions, Etc.

Notwithstanding anything to the contrary in this Agreement or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.18. Acknowledgement Regarding Any Supported QFCs. To the extent that this Agreement provides support, through a guarantee or otherwise, for hedging agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support"), and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that this Agreement and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and this Agreement were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.19. Release of Guarantees. A Guarantor (other than the Borrower) shall automatically be released from its obligations under the Loan Documents and the Guarantee of such Guarantor shall automatically be terminated, in each case, upon (i) the consummation of any transaction permitted by this Agreement as a result of which such Guarantor ceases to be a Restricted Subsidiary; provided that, if so required by Section 9.02, the Required Lenders shall have consented to such transaction or (ii) such Guarantor becoming an Excluded Subsidiary; provided that the Borrower has elected for such Excluded Subsidiary to be released from its Guarantee. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 9.02) to take any action requested by Borrower having the effect of releasing any

guarantee obligations to the extent not prohibited by any Loan Document or consented to in accordance with Section 9.02. Notwithstanding anything to the contrary herein, any Guarantor that is a guarantor with respect to any Specified Borrower Indebtedness shall not be released from its obligations under the Loan Documents and the Guarantee of such Guarantor shall not be terminated pursuant to any Loan Document, in each case, so long as it remains a guarantor of such Specified Borrower Indebtedness. In connection with any termination or release pursuant to this Section 9.19, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release so long as the Borrower or applicable Loan Party shall have provided the Administrative Agent such certifications or documents as the Administrative Agent shall reasonably request in order to demonstrate compliance with this Agreement.

SECTION 9.20. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or other Obligation owing under this Agreement, together with all fees, charges and other amounts that are treated as interest on such Loan or other Obligation under applicable law (collectively, "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender or other Person holding such Loan or other Obligation in accordance with applicable law, the rate of interest payable in respect of such Loan or other Obligation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and Charges that would have been paid in respect of such Loan or other Obligation but were not paid as a result of the operation of this Section 9.20 shall be cumulated and the interest and Charges payable to such Lender or other Person in respect of other Loans or Obligations or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender or other Person. Any amount collected by such Lender or other Person that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or other Obligation or refunded to the Borrower so that at no time shall the interest and Charges paid or payable in respect of such Loan or other Obligation exceed the maximum amount collectible at the Maximum Rate.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first above written.

TESLA, INC., as the Borrower

By: /s/ Zachary Kirkhorn
Name: Zachary Kirkhorn
Title: Chief Financial Officer

By: /s/ Jeffrey Munson
Name: Jeffrey Munson
Title: Director, Treasury & Capital Markets

[Signature Page to Credit Agreement]

CITIBANK, N.A., as the Administrative Agent, and as a Lender and Issuing Bank

By: /s/ Susan Olsen
Name: Susan Olsen
Title: Vice President

[Signature Page to Credit Agreement]

DEUTSCHE BANK AG NEW YORK BRANCH, as a Lender and Issuing
Bank

By: /s/ Ming K. Chu
Name: Ming K. Chu
Title: Director

By: /s/ Marko Lukin
Name: Marko Lukin
Title: Vice President

[Signature Page to Credit Agreement]

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a
Lender and Issuing Bank

By: /s/ Jill Wong
Name: Jill Wong
Title: Director

By: /s/ Gordon Yip
Name: Gordon Yip
Title: Director

[Signature Page to Credit Agreement]

GOLDMAN SACHS BANK USA, as a Lender and Issuing Bank

By: /s/ Rebecca Kratz
Name: Rebecca Kratz
Title: Authorized Signatory

[Signature Page to Credit Agreement]

By: /s/ Andrew Everett
Name: Andrew Everett
Title: Senior Vice President

[Signature Page to Credit Agreement]

By: /s/ Michael King
Name: Michael King
Title: Authorized Signatory

[Signature Page to Credit Agreement]

SOCIETE GENERALE, as a Lender and Issuing Bank

By: /s/ Kimberly Metzger
Name: Kimberly Metzger
Title: Director

[Signature Page to Credit Agreement]

The Toronto-Dominion Bank, New York Branch, as a Lender and Issuing Bank

By: /s/ David Perlman
Name: David Perlman
Title: Authorized Signatory

[Signature Page to Credit Agreement]

By: /s/ Jonathan D. Beck
Name: Jonathan D. Beck
Title: Director

[Signature Page to Credit Agreement]

By: /s/ Andres Barbosa
Name: Andres Barbosa
Title: Managing Director

By: /s/ Rita Walz-Cuccioli
Name: Rita Walz-Cuccioli
Title: Executive Director

[Signature Page to Credit Agreement]

By: /s/ Kamala Basdeo
Name: Kamala Basdeo
Title: Assistant Vice President

By: /s/ Tina Wong
Name: Tina Wong
Title: Assistant Vice President

[Signature Page to Credit Agreement]

Bank of China Limited, New York Branch, as a Lender

By: /s/ Raymond Qiao
Name: Raymond Qiao
Title: Executive Vice President

[Signature Page to Credit Agreement]

By: /s/ Farhad Merali

Name: Farhad Merali

Title: Managing Director & Authorized Signatory

[Signature Page to Credit Agreement]

CREDIT SUISSE AG, New York Branch, as a Lender

By: /s/ Doreen Barr
Name: Doreen Barr
Title: Authorized Signatory

By: /s/ Michael Dieffenbacher
Name: Michael Dieffenbacher
Title: Authorized Signatory

[Signature Page to Credit Agreement]

STANDARD CHARTERED BANK, as a Lender

By: /s/ Kristopher Tracy
Name: Kristopher Tracy
Title: Director, Financing Solutions

[Signature Page to Credit Agreement]

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Rolf Schmitz
Name: Rolf Schmitz
Title: Managing Director

[Signature Page to Credit Agreement]

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Brett M. Justman
Name: Brett M. Justman
Title: Vice President

[Signature Page to Credit Agreement]

By: /s/ Edward D. Herko
Name: Edward D. Herko
Title: Director

By: /s/ Thomas Petz
Name: Thomas Petz
Title: Managing Director

[Signature Page to Credit Agreement]

BANK OF THE WEST, as a Lender

By: /s/ Charlene A Davidson
Name: Charlene A Davidson
Title: Managing Director

[Signature Page to Credit Agreement]

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Tak Cheng
Name: Tak Cheng
Title: Vice President

[Signature Page to Credit Agreement]

BARCLAYS BANK PLC, as a Lender

By: /s/ Sean Duggan
Name: Sean Duggan
Title: Director

[Signature Page to Credit Agreement]

SUBSIDIARIES OF TESLA, INC.

Name of Subsidiary	Jurisdiction of Incorporation or Organization
Alabama Service LLC	Delaware
Allegheny Solar 1, LLC	Delaware
Allegheny Solar Manager 1, LLC	Delaware
Alset Transport GmbH	Germany
Alset Warehouse GmbH	Germany
Ancon Holdings II, LLC	Delaware
Ancon Holdings III, LLC	Delaware
Ancon Holdings, LLC	Delaware
Ancon Solar Corporation	Delaware
Ancon Solar I, LLC	Delaware
Ancon Solar II Lessee Manager, LLC	Delaware
Ancon Solar II Lessee, LLC	Delaware
Ancon Solar II Lessor, LLC	Delaware
Ancon Solar III Lessee Manager, LLC	Delaware
Ancon Solar III Lessee, LLC	Delaware
Ancon Solar III Lessor, LLC	Delaware
Ancon Solar Managing Member I, LLC	Delaware
Arpad Solar Borrower, LLC	Delaware
Arpad Solar I, LLC	Delaware
Arpad Solar Manager I, LLC	Delaware
AU Solar 1, LLC	Delaware
AU Solar 2, LLC	Delaware
Banyan SolarCity Manager 2010, LLC	Delaware
Banyan SolarCity Owner 2010, LLC	Delaware
Basking Solar I, LLC	Delaware
Basking Solar II, LLC	Delaware
Basking Solar Manager II, LLC	Delaware
Beatrix Solar I, LLC	Delaware
Bernese Solar Manager I, LLC	Delaware
Blue Skies Solar I, LLC	Delaware
Blue Skies Solar II, LLC	Delaware
BT Connolly Storage, LLC	Texas
Caballero Solar Managing Member I, LLC	Delaware
Caballero Solar Managing Member II, LLC	Delaware
Caballero Solar Managing Member III, LLC	Delaware
Cardinal Blue Solar, LLC	Delaware
Castello Solar I, LLC	Delaware
Castello Solar II, LLC	Delaware
Castello Solar III, LLC	Delaware
Chaparral SREC Borrower, LLC	Delaware
Chaparral SREC Holdings, LLC	Delaware
Chompie Solar I, LLC	Delaware
Chompie Solar II, LLC	Delaware
Chompie Solar Manager I, LLC	Delaware
Chompie Solar Manager II, LLC	Delaware
Clydesdale SC Solar I, LLC	Delaware
Colorado River Project, LLC	Delaware
Community Solar Partners, LLC	Delaware
Connecticut Auto Repair and Service LLC	Delaware
Compass Automation Incorporated	Illinois
Dom Solar General Partner I, LLC	Delaware
Dom Solar Lessor I, LP	Cayman Islands
Domino Solar Ltd.	Cayman Islands
Dom Solar Limited Partner I, LLC	Delaware
Falconer Solar Manager I, LLC	Delaware

Firehorn Solar I, LLC	Cayman Islands
Firehorn Solar Manager I, LLC	Delaware
FocalPoint Solar Borrower, LLC	Delaware
FocalPoint Solar I, LLC	Delaware
FocalPoint Solar Manager I, LLC	Delaware
Fontane Solar I, LLC	Delaware
Fotovoltaica GI 4, S. de R.L. de C.V.	Mexico
Fotovoltaica GI 5, S. de R.L. de C.V.	Mexico
FP System Owner, LLC	Delaware
Giga Insurance Texas, Inc.	Texas
Giga Texas Energy, LLC	Delaware
Grohmann Engineering Trading (Shanghai) Co. Ltd.	China
Grohmann USA, Inc.	Delaware
Guilder Solar, LLC	Delaware
Hamilton Solar, LLC	Delaware
Hangzhou Silevo Electric Power Co., Ltd.	China
Harpoon Solar I, LLC	Delaware
Harpoon Solar Manager I, LLC	Delaware
Haymarket Holdings, LLC	Delaware
Haymarket Manager 1, LLC	Delaware
Haymarket Solar 1, LLC	Delaware
Hibar Systems Europe GmbH	Germany
Hive Battery Inc.	Delaware
Ikehu Manager I, LLC	Delaware
IL Buono Solar I, LLC	Delaware
Iliosson, S.A. de C.V.	Mexico
Industrial Maintenance Technologies, Inc.	California
Kansas Repair LLC	Delaware
Klamath Falls Solar 1, LLC	Delaware
Knight Solar Managing Member I, LLC	Delaware
Knight Solar Managing Member II, LLC	Delaware
Knight Solar Managing Member III, LLC	Delaware
Landlord 2008-A, LLC	Delaware
Louis Solar II, LLC	Delaware
Louis Solar III, LLC	Delaware
Louis Solar Manager II, LLC	Delaware
Louis Solar Manager III, LLC	Delaware
Louis Solar Master Tenant I, LLC	Delaware
Louis Solar MT Manager I, LLC	Delaware
Louis Solar Owner I, LLC	Delaware
Louis Solar Owner Manager I, LLC	Delaware
Master Tenant 2008-A, LLC	Delaware
Matterhorn Solar I, LLC	Delaware
Maxwell Holding GmbH	Germany
Maxwell Technologies GmbH	Germany
Maxwell Technologies, Inc.	Delaware
Megalodon Solar, LLC	Delaware
MML Acquisition Corp.	Delaware
Monte Rosa Solar I, LLC	Delaware
Mound Solar Manager V, LLC	Delaware
Mound Solar Manager VI, LLC	Delaware
Mound Solar Manager X, LLC	Delaware
Mound Solar Manager XI, LLC	Delaware
Mound Solar Manager XII, LLC	Delaware
Mound Solar Master Tenant IX, LLC	Delaware
Mound Solar Master Tenant V, LLC	California
Mound Solar Master Tenant VI, LLC	Delaware
Mound Solar Master Tenant VII, LLC	Delaware
Mound Solar Master Tenant VIII, LLC	Delaware
Mound Solar MT Manager IX, LLC	Delaware
Mound Solar MT Manager VII, LLC	Delaware

Mound Solar MT Manager VIII, LLC	Delaware
Mound Solar Owner IX, LLC	Delaware
Mound Solar Owner Manager IX, LLC	Delaware
Mound Solar Owner Manager VII, LLC	Delaware
Mound Solar Owner Manager VIII, LLC	Delaware
Mound Solar Owner V, LLC	California
Mound Solar Owner VI, LLC	Delaware
Mound Solar Owner VII, LLC	Delaware
Mound Solar Owner VIII, LLC	Delaware
Mound Solar Partnership X, LLC	Delaware
Mound Solar Partnership XI, LLC	Delaware
Mound Solar Partnership XII, LLC	Delaware
MS SolarCity 2008, LLC	Delaware
MS SolarCity Commercial 2008, LLC	Delaware
MS SolarCity Residential 2008, LLC	Delaware
New Mexico Sales and Vehicle Service LLC	Delaware
NBA SolarCity AFB, LLC	California
NBA SolarCity Commercial I, LLC	California
NBA SolarCity Solar Phoenix, LLC	California
Northern Nevada Research Co., LLC	Nevada
Orange Vehicle Sales LLC	Delaware
Oranje Solar I, LLC	Delaware
Oranje Solar Manager I, LLC	Delaware
Paramount Energy Fund I Lessee, LLC	Delaware
Paramount Energy Fund I Lessor, LLC	Delaware
PEF I MM, LLC	Delaware
Perbix Machine Company, Inc.	Minnesota
Presidio Solar I, LLC	Delaware
Presidio Solar II, LLC	Delaware
Presidio Solar III, LLC	Delaware
Pukana La Solar I, LLC	Delaware
R9 Solar 1, LLC	Delaware
Roadster Automobile Sales and Service (Beijing) Co., Ltd.	China
Roadster Finland Oy	Finland
SA VPP Holding Trust	Australia
SA VPP Project Trust	Australia
Sequoia Pacific Holdings, LLC	Delaware
Sequoia Pacific Manager I, LLC	Delaware
Sequoia Pacific Solar I, LLC	Delaware
Sequoia SolarCity Owner I, LLC	Delaware
Sierra Solar Power (Hong Kong) Limited	Hong Kong
SiiLion, Inc.	Delaware
Silevo, LLC	Delaware
Shoreline Vehicle Sales LLC	Delaware
Solar Aquarium Holdings, LLC	Delaware
Solar Energy of America 1, LLC	Delaware
Solar Energy of America Manager 1, LLC	Delaware
Solar Explorer, LLC	Delaware
Solar Gezellig Holdings, LLC	Delaware
Solar House I, LLC	Delaware
Solar House II, LLC	Delaware
Solar House III, LLC	Delaware
Solar House IV, LLC	Delaware
Solar Integrated Fund I, LLC	Delaware
Solar Integrated Fund II, LLC	Delaware
Solar Integrated Fund III, LLC	Delaware
Solar Integrated Fund IV-A, LLC	Delaware
Solar Integrated Fund V, LLC	Delaware
Solar Integrated Fund VI, LLC	Delaware
Solar Integrated Manager I, LLC	Delaware
Solar Integrated Manager II, LLC	Delaware

Solar Integrated Manager III, LLC	Delaware
Solar Integrated Manager IV-A, LLC	Delaware
Solar Integrated Manager V, LLC	Delaware
Solar Integrated Manager VI, LLC	Delaware
Solar Services Company, LLC	Delaware
Solar Ulysses Manager I, LLC	Delaware
Solar Ulysses Manager II, LLC	Delaware
Solar Voyager, LLC	Delaware
Solar Warehouse Manager I, LLC	Delaware
Solar Warehouse Manager II, LLC	Delaware
Solar Warehouse Manager III, LLC	Delaware
Solar Warehouse Manager IV, LLC	Delaware
SolarCity Alpine Holdings, LLC	Delaware
SolarCity Amphitheatre Holdings, LLC	Delaware
SolarCity Arbor Holdings, LLC	Delaware
SolarCity Arches Holdings, LLC	Delaware
SolarCity AU Holdings, LLC	Delaware
SolarCity Cruyff Holdings, LLC	Delaware
SolarCity Electrical, LLC	Delaware
SolarCity Electrical New York Corporation	Delaware
SolarCity Finance Company, LLC	Delaware
SolarCity Finance Holdings, LLC	Delaware
SolarCity Foxborough Holdings, LLC	Delaware
SolarCity FTE Series 1, LLC	Delaware
SolarCity FTE Series 2, LLC	Delaware
SolarCity Fund Holdings, LLC	Delaware
SolarCity Grand Canyon Holdings, LLC	Delaware
SolarCity Holdings 2008, LLC	Delaware
SolarCity International, Inc.	Delaware
SolarCity Leviathan Holdings, LLC	Delaware
SolarCity LMC Series I, LLC	Delaware
SolarCity LMC Series II, LLC	Delaware
SolarCity LMC Series III, LLC	Delaware
SolarCity LMC Series IV, LLC	Delaware
SolarCity LMC Series V, LLC	Delaware
SolarCity Mid-Atlantic Holdings, LLC	Delaware
SolarCity Nitro Holdings, LLC	Delaware
SolarCity Orange Holdings, LLC	Delaware
SolarCity Series Holdings I, LLC	Delaware
SolarCity Series Holdings II, LLC	Delaware
SolarCity Series Holdings IV, LLC	Delaware
SolarCity Steep Holdings, LLC	Delaware
SolarCity Ulu Holdings, LLC	Delaware
SolarCity Village Holdings, LLC	Delaware
SolarRock, LLC	Delaware
SolarStrong, LLC	Delaware
Sparrowhawk Solar I, LLC	Delaware
SREC Holdings, LLC	Delaware
TALT Holdings, LLC	Delaware
TALT TBM Holdings, LLC	Delaware
TBM Partnership II, LLC	Delaware
TEO Engineering, Inc.	California
TES 2017-1, LLC	Delaware
TES 2017-2, LLC	Delaware
TES Holdings 2017-1, LLC	Delaware
Tesla 2014 Warehouse SPV LLC	Delaware
Tesla Auto Lease Trust 2019-A	Delaware
Tesla Auto Lease Trust 2020-A	Delaware
Tesla Auto Lease Trust 2021-A	Delaware
Tesla Auto Lease Trust 2021-B	Delaware
Tesla Auto Lease Trust 2022-A	Delaware

Tesla Automation GmbH	Germany
Tesla Automobile Information Service (Dalian) Co., Ltd.	China
Tesla Automobile Management and Service (Haikou) Co., Ltd.	China
Tesla Automobile Sales and Service (Beijing) Co., Ltd.	China
Tesla Automobile Sales and Service (Changchun) Co., Ltd.	China
Tesla Automobile Sales and Service (Changsha) Co., Ltd.	China
Tesla Automobile Sales and Service (Chengdu) Co., Ltd.	China
Tesla Automobile Sales and Service (Chongqing) Co., Ltd.	China
Tesla Automobile Sales and Service (Dalian) Co., Ltd.	China
Tesla Automobile Sales and Service (Fuzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Guangzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Guiyang) Co., Ltd.	China
Tesla Automobile Sales and Service (Haerbin) Co., Ltd.	China
Tesla Automobile Sales and Service (Hangzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Hefei) Co., Ltd.	China
Tesla Automobile Sales and Service (Hohhot) Co., Ltd.	China
Tesla Automobile Sales and Service (Jinan) Co., Ltd.	China
Tesla Automobile Sales and Service (Kunming) Co., Ltd.	China
Tesla Automobile Sales and Service (Lanzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanchang) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanjing) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanning) Co., Ltd.	China
Tesla Automobile Sales and Service (Ningbo) Co., Ltd.	China
Tesla Automobile Sales and Service (Qingdao) Co., Ltd.	China
Tesla Automobile Sales and Service (Shanghai) Co., Ltd.	China
Tesla Automobile Sales and Service (Shenyang) Co., Ltd.	China
Tesla Automobile Sales and Service (Shijiazhuang) Co., Ltd.	China
Tesla Automobile Sales and Service (Suzhou) Co. Ltd.	China
Tesla Automobile Sales and Service (Taiyuan) Co., Ltd.	China
Tesla Automobile Sales and Service (Tianjin) Co. Ltd.	China
Tesla Automobile Sales and Service (Urumqi) Co. Ltd.	China
Tesla Automobile Sales and Service (Wenzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Wuhan) Co., Ltd.	China
Tesla Automobile Sales and Service (Xi'an) Co., Ltd.	China
Tesla Automobile Sales and Service (Xiamen) Co., Ltd.	China
Tesla Automobile Sales and Service (Yinchuan) Co., Ltd.	China
Tesla Automobile Sales and Service (Zhengzhou) Co. Ltd.	China
Tesla Automobiles Sales and Service Mexico, S. de R.L. de C.V.	Mexico
Tesla (Beijing) New Energy R&D Co., Ltd.	China
Tesla Belgium BV	Belgium
Tesla Canada Finance ULC	Canada
Tesla Canada GP Inc.	Canada
Tesla Canada LP	Canada
Tesla Charging, LLC	Delaware
Tesla Construction (Shanghai) Co., Ltd.	China
Tesla Czech Republic s.r.o.	Czech Republic
Tesla Energia Macau Limitada	Macau
Tesla Energy d.o.o.	Slovenia
Tesla Energy Management LLC	
Tesla Energy Operations, Inc.	Delaware
Tesla Finance LLC	Delaware
Tesla Financial Leasing (China) Co., Ltd.	China
Tesla Financial Services GmbH	Germany
Tesla Financial Services Holdings B.V.	Netherlands
Tesla Financial Services Limited	United Kingdom
Tesla France S.à r.l.	France
Tesla Germany GmbH	Germany
Tesla General Insurance, Inc.	Arizona
Tesla Greece Single Member P.C.	Greece
Tesla Hrvatska d.o.o.	Croatia
Tesla Hungary Kft.	Hungary

Tesla India Motors and Energy Private Limited	India
Tesla Insurance Brokers Co., Ltd.	China
Tesla Insurance Holdings, LLC	Delaware
Tesla Insurance, Inc.	Delaware
Tesla Insurance Ltd.	Malta
Tesla Insurance Company	California
Tesla Insurance Services, Inc.	California
Tesla Insurance Services of Texas, Inc.	Texas
Tesla International B.V.	Netherlands
Tesla Investments LLC	Delaware
Tesla Italy S.r.l.	Italy
Tesla Jordan Car Trading LLC	Jordan
Tesla Korea Limited	Republic of Korea
Tesla Lease Trust	Delaware
Tesla LLC	Delaware
Tesla Manufacturing Brandenburg SE	Germany
Tesla Michigan, Inc.	Michigan
Tesla Mississippi LLC	Delaware
Tesla Motors Australia, Pty Ltd	Australia
Tesla Motors Austria GmbH	Austria
Tesla Motors (Beijing) Co., Ltd.	China
Tesla Motors Canada ULC	Canada
Tesla Motors Coöperatief U.A.	Netherlands
Tesla Motors Denmark ApS	Denmark
Tesla Motors FL, Inc.	Florida
Tesla Motors HK Limited	Hong Kong
Tesla Motors Iceland ehf.	Iceland
Tesla Motors Ireland Limited	Ireland
Tesla Motors Israel Ltd.	Israel
Tesla Motors Japan GK	Japan
Tesla Motors Limited	United Kingdom
Tesla Motors Luxembourg S.à r.l.	Luxembourg
Tesla Motors MA, Inc.	Massachusetts
Tesla Motors Netherlands B.V.	Netherlands
Tesla Motors New York LLC	New York
Tesla Motors NL LLC	Delaware
Tesla Motors NV, Inc.	Nevada
Tesla Motors PA, Inc.	Pennsylvania
Tesla Motors Romania S.R.L.	Romania
Tesla Motors Sales and Service LLC	Turkey
Tesla Motors Singapore Holdings Pte. Ltd.	Singapore
Tesla Motors Singapore Private Limited	Singapore
Tesla Motors Stichting	Netherlands
Tesla Motors Taiwan Limited	Taiwan
Tesla Motors TN, Inc.	Tennessee
Tesla Motors TX, Inc.	Texas
Tesla Motors UT, Inc.	Utah
Tesla Nambe LLC	Delaware
Tesla New Zealand ULC	New Zealand
Tesla Norway AS	Norway
Tesla Poland sp. z o.o.	Poland
Tesla Property & Casualty, Inc.	California
Tesla Portugal, Sociedade Unipessoal LDA	Portugal
Tesla Puerto Rico LLC	Puerto Rico
Tesla Pumps (Ningbo) Co.,LTD (fka: Hibar China Co. Ltd.)	China
Tesla Pumps Seoul Ltd.	Republic of Korea
Tesla Sales, Inc.	Delaware
Tesla Sdn. Bhd.	Malaysia
Tesla Shanghai Co., Ltd	China
Tesla Spain, S.L. Unipersonal	Spain
Tesla Switzerland GmbH	Switzerland

Tesla (Thailand) Ltd.	Thailand
Tesla TH1 LLC	Delaware
Tesla TH2 LLC	Delaware
Telsa Toronto Automation ULC	Canada
Tesla Toronto International Holdings ULC	Canada
Tesla Transport B.V.	Netherlands
The Big Green Solar I, LLC	Delaware
The Big Green Solar Manager I, LLC	Delaware
Three Rivers Solar 1, LLC	Delaware
Three Rivers Solar 2, LLC	Delaware
Three Rivers Solar 3, LLC	Delaware
Three Rivers Solar Manager 1, LLC	Delaware
Three Rivers Solar Manager 2, LLC	Delaware
Three Rivers Solar Manager 3, LLC	Delaware
TM International C.V.	Netherlands
TM Sweden AB	Sweden
USB SolarCity Manager IV, LLC	Delaware
USB SolarCity Master Tenant IV, LLC	California
USB SolarCity Owner IV, LLC	California
Visigoth Solar 1, LLC	Delaware
Visigoth Solar Holdings, LLC	Delaware
Visigoth Solar Managing Member 1, LLC	Delaware
VPP Project 1 (SA) Pty Ltd.	Australia
Weisshorn Solar I, LLC	Delaware
Weisshorn Solar Manager I, LLC	Delaware
Zep Solar LLC	California

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-232079, 333-223169, 333-216376, 333-209696, 333-198002, 333-187113, 333-183033, and 333-167874) of Tesla, Inc. of our report dated January 30, 2023 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California
January 30, 2023

CERTIFICATIONS

I, Elon Musk, certify that:

1. I have reviewed this Annual Report on Form 10-K of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 30, 2023

/s/ Elon Musk

Elon Musk
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Zachary J. Kirkhorn, certify that:

1. I have reviewed this Annual Report on Form 10-K of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 30, 2023

/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 Annual Report of Tesla, Inc. on Form 10-K for the annual period ended December 31, 2022, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: January 30, 2023

/s/ Elon Musk

Elon Musk

Chief Executive Officer
(Principal Executive Officer)

I, Zachary J. Kirkhorn, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Annual Report of Tesla, Inc. on Form 10-K for the annual period ended December 31, 2022, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: January 30, 2023

/s/ Zachary J. Kirkhorn

Zachary J. Kirkhorn

Chief Financial Officer
(Principal Financial Officer)

