(b)(4),(b)(5),(b)(6)

UNITED STATES DEPARTMENT OF ENERGY

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING INCENTIVE PROGRAM

TESLA MOTORS, INC.

CLOSING DOCUMENTS
JANUARY 20, 2010

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Doc#: US1:5877491v3

TESLA MOTORS, INC.

INDEX

Tab

VOLUME I

Loan Arrangement and Reimbursement Agreement **1**

Annex A	Definitions	
Annex 9.1	Financial Covenants	
Annex 9.4	Additional Conditions to Permitted Equity Proceeds Investments	
Exhibit A	Form of Note P	A
Exhibit B	Form of Note S	B
Exhibit C	Form of Drawstop Notice	C
Exhibit D	Form of Guarantee	D
Exhibit E	Form of Subordination Agreement	E
Exhibit F	Form of Collateral Trust Agreement	F
Exhibit G	Form of Security Agreement	G
Exhibit H	Form of Subsidiary Joinder Agreement	H
Exhibit I-1	Form of Collateral Schedules	I
Exhibit I-2	Form of Collateral Supplement	J
Exhibit J	Form of Collateral Access Agreement (Landlord)	K
Exhibit K	Form of Collateral Access Agreement (Warehouse)	L
Exhibit L	Form of Warrants	M
Exhibit M	Form of Registration Rights Agreement	N
Exhibit N	Form of Charter Amendment	O
Exhibit O	Form of Solvency Certificate	P
Exhibit P	Form of Blocked Account Control Agreement	Q
Exhibit Q	Form of Lobbying Certificate	R
Exhibit R	Form of Lobbying Disclosure	S
Exhibit S-1	Form of Borrower Certificate (Closing)	T
Exhibit S-2	Form of Borrower Certificate (Financial Documents)	U

FFB DOCUMENTS

Program Financing Agreement ("PFA") **2**

Annex 1	Form of Certificate Specifying Authorized Department Officials	A
Annex 2	Form of Designation Notice	B
Annex 3	Form of NPA	C
Annex 4	Form of Opinion of Secretary's Counsel re: PFA	D

Opinion of Secretary's Counsel re: PFA **3**

TESLA MOTORS, INC.

INDEX

		Tab
Certificate Specifying Authorized Department Officials		**4**
Note Purchase Agreement		**5**
Exhibit A	Form of FFB Advance Request	A
Exhibit B	Form of Certificate Specifying Authorized Borrower Officials	B
Exhibit C	Forms of Note P and Note S	C
Exhibit D	Form of Opinion of Borrower's Counsel re: Borrower's Instruments	D
Exhibit E	Form of Opinion of Secretary's Counsel re: Secretary's Affirmation	E
Exhibit F	Form of Secretary's Affirmation	F
Exhibit G	Form of Secretary's Certificate	G
Future Advance Promissory Notes		**6**
Project P Promissory Note		A
Project S Promissory Note		B
Secretary's Affirmation		**7**
Opinion of Secretary's Counsel re: Secretary's Affirmation		**8**
Secretary's Certificate		**9**
Designation Notice		**10**
Opinion of Wilson Sonsini Goodrich and Rosati LLP re: Borrower's Instruments		**11**
Certificate Specifying Authorized Borrower Officials		**12**
FFB Acceptance Notice		**13**
Acceptance Notice for Note P		A
Acceptance Notice for Note S		B

ANCILLARY AND SECURITY DOCUMENTS

Forms Supplement		**14**
Exhibit A	Form of Advance Request	A
Exhibit B	Sample Project Forecast and Overrun Calculation	B
Exhibit C	Form of Compliance Certificate	C
Exhibit D	Form of CAEATFA Conveyance/Reconveyance Instrument	D
Exhibit E	Financial Covenant Examples	E
Guarantee		**15**
Subordination Agreement		**16**
Warrants		**17**
Registration Rights Agreement		**18**
Collateral Trust Agreement		**19**

TESLA MOTORS, INC.

INDEX

		Tab
Pledge and Security Agreement		**20**
Exhibit A	Form of Uncertificated Securities Control Agreement	A
Exhibit B	Form of Securities Account Control Agreement	B
Exhibit C	Form of Deposit Account Control Agreement	C
Exhibit D	Form of Patent Security Agreement	D
Exhibit E	Form of Trademark Security Agreement	E
Exhibit F	Form of Copyright Security Agreement	F
Collateral Schedules		**21**
Schedule A	Organizational Information Schedule	A
Schedule B	Pledged Equity Interests	B
Schedule C	Deposit Accounts, Commodity Accounts and Securities Accounts	C
Schedule D	Intellectual Property	D
Schedule E	Investment Property	E
Schedule F	Letter of Credit Rights	F
Schedule G	Locations of Collateral	G
Schedule H	Key Life Insurance Policies	H
Schedule I	Chattel Paper and Instruments	I
Schedule J	Commercial Tort Claims	J
Schedule K	Material Excluded Property	K
Patent Security Agreements		**22**
Trademark Security Agreement		**23**
Account Control Agreements		**24**
Blocked Account Control Agreement (Dedicated Account) (PNC Bank, N.A.)		A
Blocked Account Control Agreement (Initial Debt Service Account) (PNC Bank, N.A.)		B
Letter from PNC regarding Blocked Account Information		C
Deposit Account Control Agreement (City National Bank)		D
Deposit Account Control Agreement (HSBC)		E
Restricted Account and Securities Account Control Agreement (Wells Fargo Bank, N.A.)		F
Securities Account Control - Consent Agreement (Wells Fargo Securities, LLC)		G
Uncertificated Securities Control Agreements		**25**
Tesla Motors GMBH		A
Tesla Motors Taiwan		B
Tesla Motors S.A.R.L.		C

TESLA MOTORS, INC.

INDEX

		Tab
Stock Certificates representing Pledged Stock, together with stock powers		**26**
Tesla Motors Ltd. (65%)		A
Tesla Motors Canada Inc. (65%)		B
AC Propulsion (100%)		C
UCC-1 Financing Statements		**27**
Tesla Motors, Inc. (Delaware)		A
Tesla Motors New York LLC (New York)		B
Tesla Motors, Inc. Fixture Filing (Deer Creek, California)		C
Collateral Access Agreement (Deer Creek)		**28**
Opinion of Wilson Sonsini Goodrich and Rosati LLP		**29**
Closing Certificate re: Financial Matters		**30**
Exhibit 5.1(l)(i)	Historical Financial Statements	A
Exhibit 5.1(l)(ii)	Computations with respect to Financial Covenants	B
Exhibit 5.1(m)	Business Plan	C
Exhibit 5.1(n)-1	Historical Costs	D
Exhibit 5.1(n)-2	Eligible Project Costs (December 15, 2008-September 30, 2009)	E
Solvency Certificate		**31**
Borrower Certificate for Closing		**32**
Exhibit 5.1(r)	Foreign Exchange Strategy	A
Exhibit 5.1(x)	Deer Creek Lease	B
Exhibit A	Authorized Transmitter Schedule	C
Davis Bacon Side Letter		**33**
Lobbying Certificate		**34**
Lobbying Disclosure		**35**
Certification from Insurance Advisor re: maintaining Required Insurance		**36**
Insurance Endorsements		**37**
Secretary's Certificate of Tesla Motors, Inc		**38**
Exhibit A	Certificate of Incorporation of Borrower, as amended	A
Exhibit B	Bylaws of Borrower	B
Exhibit C	Resolutions of the Board of Borrower with respect to the transaction	C
Exhibit D	Resolutions of the Shareholders of Borrower with respect to the transaction	D
Exhibit E-1	Good Standing of Borrower (Delaware)	E
Exhibit E-2	Foreign Qualification and Good Standing of Borrower (California)	E
Exhibit E-3	Foreign Qualification and Good Standing of Borrower (Colorado)	E

Tab

Exhibit E-4 Foreign Qualification and Good Standing of Borrower (Florida) ..... E

Exhibit E-5 Foreign Qualification and Good Standing of Borrower (Illinois) ..... E

Exhibit E-6 Foreign Qualification and Good Standing of Borrower (New York) ..... E

Exhibit E-7 Foreign Qualification and Good Standing of Borrower (Washington) ..... E

Exhibit F Incumbency (Borrower) ..... F

Exhibit G Incumbency (Tesla Motors S.A.R.L.) ..... G

Certificate of Understanding re: Amendment to Certificate of Incorporation 39

Form of Clarifying Charter Amendment, to be filed in accordance with Section 7.23 of the Arrangement Agreement 40

Secretary's Certificate of Tesla Motors New York LLC 41

Exhibit A Certificate of Formation of Guarantor ..... A

Exhibit B Bylaws/ Operating Agreements of Guarantor ..... B

Exhibit C Resolutions Adopted by Sole Member of Guarantor C

Exhibit D Good Standing of Guarantor in jurisdiction of organization ..... D

Exhibit E Incumbency (Guarantor) ..... E

Updated Information Certificate 42

Section A ..... A

Schedule A-1 Organizational Structure Chart 1

Schedule A-2 Company Identification 2

Schedule A-3 Other Names 3

Schedule A-4 Fundamental Changes 4

Schedule A-5 Foreign Qualifications 5

Schedule A-6 Directors and Officers 6

Schedule A-7 Stock Ownership and Other Equity Interests (with Capitalization Table) 7

Section B ..... B

Schedule B-1 Real Property Owned or Leased 1

Schedule B-2 Third Party Locations of Collateral 2

Schedule B-3 Future Project Locations 3

Section C C

Schedule C-1 Cash; Accounts; Other Investment Property 1

Schedule C-2 Promissory Notes; Instruments; Chattel Paper 2

Schedule C-3 Intellectual Property 3

Schedule C-4 Vehicles and Other Titled Assets 4

Schedule C-5 Commercial Tort Claims 5

Schedule C-6 Special Situations 6

TESLA MOTORS, INC.

INDEX

		Tab
Section D		D
Schedule D-1	Sources and Use of Funding; Project Documents	1
Schedule D-2	Contracts with Customers and Suppliers	2
Schedule D-3	Insurance	3
Schedule D-4	Indebtedness	4
Schedule D-5	Liens	5
Schedule D-6	Litigation	6
Schedule D-7	Employment	7
Schedule D-8	Employee Benefit Plans (with Vesting Schedule for Key Employees)	8
Schedule D-9	Environmental Matters	9
Schedule D-10	Tax Matters	10
Schedule D-11	Permits and Other Regulatory Matters	11
Schedule D-12	Intercompany Arrangements	12
Schedule D-13	Transactions with Affiliates	13
Schedule D-14	Correspondence with Auditors	14
Schedule D-15	Other Material Contracts	15
Section E		E
Schedule E-1	Completeness of Information Presented	1
Schedule E-2	Due Authorization; No Defaults or Consents	2
Additional Schedules		
Schedule 6.6	Required Consents	F
Schedule 6.34	Completeness of Information	G
Redline of final Information Certificate against June 23, 2009 version		**43**
Closing Checklist as of January 20, 2010		**44**

EXECUTION COPY

LOAN ARRANGEMENT AND REIMBURSEMENT AGREEMENT

between

TESLA MOTORS, INC.

and

UNITED STATES DEPARTMENT OF ENERGY

dated January 20, 2010

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND OTHER RULES OF CONSTRUCTION 2
1.1 Terms Generally 2
1.2 Other Rules of Construction 2
1.3 Definitions in Other Written Communications 3
1.4 Conflict with Funding Agreements 3
1.5 Accounting Terms; Calculations 3

ARTICLE II FUNDING 4
2.1 Loans 4
2.2 Loan Commitment Amount Reductions 4
2.3 Mechanics for Requesting Advances 5
2.4 Mechanics for Funding Advances 7
2.5 Advance Requirements under the Funding Agreements 11
2.6 No Approval of Work 11
2.7 Determination of Advance Amounts 11
2.8 Borrower Commitments; Cash Equity Condition. 14
2.9 Cost Overruns 15
2.10 Safe Harbor Corrective Plans 19
2.11 DOE's Consultant 20
2.12 Dedicated Account. 20
2.13 Initial Debt Service Account 24

ARTICLE III PAYMENTS; PREPAYMENTS 26
3.1 Place and Manner of Payments 26
3.2 Payment of the Facility Fee 26
3.3 Maturity and Amortization 26
3.4 Evidence of Debt 27
3.5 Interest Provisions Relating to All Advances 27
3.6 Prepayments 27

ARTICLE IV REIMBURSEMENT OBLIGATIONS 31
4.1 Reimbursement and Other Payment Obligations 31
4.2 Subrogation 32
4.3 Obligations Absolute 33
4.4 Evidence of Payment 36
4.5 Payment of Loan Document Amounts 36

ARTICLE V CONDITIONS PRECEDENT 36
5.1 Conditions Precedent to the Principal Instrument Delivery Date 36
5.2 Conditions Precedent to FFB Purchase of the Notes 44
5.3 Advance Approval Conditions Precedent 45
5.4 Additional Conditions Precedent to Each Site-Dependent Advance 50
5.5 Conditions Precedent to FFB Advance 51
5.6 Advance Deductions 51

5.7 Satisfaction of Conditions Precedent 52

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF THE BORROWER 52
6.1 Organization and Existence 52
6.2 Power; Authorization; Enforceable Obligations 52
6.3 Capitalization 53
6.4 Solvency 53
6.5 Eligibility of Borrower, Projects 53
6.6 No Conflicts; Consents 53
6.7 Material Contracts 54
6.8 Permits, etc. 54
6.9 Litigation 54
6.10 Indebtedness 54
6.11 Liens 54
6.12 Financial Statements 54
6.13 Information Certificate; Project Budgets and Business Plans 55
6.14 Security Documents 55
6.15 Properties 55
6.16 Intellectual Property 56
6.17 Insurance 57
6.18 No Defaults 57
6.19 No Restricted Payments 58
6.20 No Material Adverse Effect 58
6.21 Compliance with Laws, Program Requirements 58
6.22 Investment Company Act 58
6.23 Margin Stock 58
6.24 Corrupt Practices 58
6.25 Taxes 58
6.26 Environmental Laws 59
6.27 Employment and Labor Contracts 59
6.28 Davis-Bacon Act 60
6.29 ERISA 60
6.30 OFAC and USA PATRIOT Act 61
6.31 Common Enterprise 61
6.32 Warrants 61
6.33 Federal Funding 62
6.34 Disclosure 62
6.35 Public Statements 63
6.36 CAEATFA 63

ARTICLE VII AFFIRMATIVE COVENANTS 63
7.1 Maintenance of Existence, etc. 63
7.2 Maintenance of Property 64
7.3 Intellectual Property 64
7.4 Insurance 66
7.5 Event of Loss 67
7.6 Additional Subsidiaries and Collateral; Further Assurances 68

7.7 Diligent Construction of Project and Operations 74
7.8 Title; Rights to Land 74
7.9 Project Documents 74
7.10 Performance of Obligations 75
7.11 Use of Proceeds 75
7.12 Books, Records and Inspections 75
7.13 Compliance with Requirements of Law 76
7.14 Compliance with Program Requirements 76
7.15 Environmental and Safety Audit 76
7.16 Taxes; Claims 77
7.17 Patriot Act Information 77
7.18 Davis-Bacon Act 77
7.19 ERISA Covenants 77
7.20 Investment Earnings 78
7.21 Advanced Technology Vehicles 78
7.22 OFAC 78

ARTICLE VIII INFORMATION COVENANTS 78
8.1 Financial Statements 78
8.2 Reports 81
8.3 Notices 82
8.4 Other Information. 84

ARTICLE IX NEGATIVE COVENANTS 85
9.1 Financial Covenants 85
9.2 Indebtedness 85
9.3 Liens 86
9.4 Investments 89
9.5 Merger, Dissolution or Acquisitions or Dispositions of Assets 91
9.6 Sale and Lease-Back Transactions 93
9.7 Restricted Payments 93
9.8 Use of Proceeds 95
9.9 Affiliate Transactions 95
9.10 Accounts 95
9.11 Intellectual Property 95
9.12 Subsidiaries 96
9.13 Limitations on Lines of Business 96
9.14 Organizational Documents 96
9.15 Changes to Accounting Principles 97
9.16 Modifications to Material Agreements and Business Plans 97
9.17 Negative Pledge Clauses 97
9.18 Clauses Restricting Subsidiary Distributions 98
9.19 Hedging Transactions 99
9.20 Improper Use 99
9.21 Margin Regulations 100
9.22 Environmental Laws 100
9.23 ERISA 100

9.24 Investment Company Act 100
9.25 Debarment Regulations 100
9.26 Public Statements 100
9.27 IPO and Other Equity Offerings 101

ARTICLE X EVENTS OF DEFAULT AND REMEDIES 102
10.1 Events of Default 102
10.2 Remedies; Waivers 105
10.3 Accelerated Advances 107

ARTICLE XI THE COLLATERAL TRUSTEE 107
11.1 Appointment 107
11.2 Delegation of Duties 108
11.3 Exculpatory Provisions 108
11.4 Non-Reliance on the Collateral Trustee 108
11.5 Collateral Trustee in Its Individual Capacity 109

ARTICLE XII MISCELLANEOUS 109
12.1 Amendments, etc. 109
12.2 Delay and Waiver 109
12.3 Right of Set-Off 110
12.4 Survival of Representations and Warranties 110
12.5 Notices 110
12.6 Severability; Consents 111
12.7 Judgment Currency 112
12.8 Indemnification 112
12.9 Limitation on Liability 115
12.10 Successors and Assigns 115
12.11 Participations 116
12.12 Further Assurances and Corrective Instruments 116
12.13 Reinstatement 116
12.14 Governing Law; Waiver Of Jury Trial 117
12.15 Submission to Jurisdiction, Etc. 117
12.16 Entire Agreement 117
12.17 Benefits of Agreement 118
12.18 Headings 118
12.19 Counterparts 118
12.20 No Partnership; Etc 118
12.21 Releases of Guarantees and Liens 118
12.22 Certain Waivers 119
12.23 Independence of Covenants 119
12.24 Marshaling 119
12.25 Pro Rata Treatment 119

ANNEXES AND EXHIBITS

Annex A	Definitions
Annex 9.1	Financial Covenants
Annex 9.4	Additional Conditions to Permitted Equity Proceeds Investments
Exhibit A	Form of Note P
Exhibit B	Form of Note S
Exhibit C	Form of Drawstop Notice
Exhibit D	Form of Guarantee
Exhibit E	Form of Subordination Agreement
Exhibit F	Form of Collateral Trust Agreement
Exhibit G	Form of Security Agreement
Exhibit H	Form of Subsidiary Joinder Agreement
Exhibit I-1	Form of Collateral Schedules
Exhibit I-2	Form of Collateral Supplement
Exhibit J	Form of Collateral Access Agreement (Landlord)
Exhibit K	Form of Collateral Access Agreement (Warehouse)
Exhibit L	Form of Warrants
Exhibit M	Form of Registration Rights Agreement
Exhibit N	Form of Charter Amendment
Exhibit O	Form of Solvency Certificate
Exhibit P	Form of Blocked Account Control Agreement
Exhibit Q	Form of Lobbying Certification
Exhibit R	Form of Lobbying Disclosure
Exhibit S-1	Form of Borrower Certificate (for Closing)

Exhibit S-2 Form of Borrower Certificate (for Financial Documents at Closing)

LOAN ARRANGEMENT AND REIMBURSEMENT AGREEMENT, dated January 20, 2010 (this "Agreement"), between the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America ("DOE") and TESLA MOTORS, INC. (the "Borrower"), a corporation organized under the laws of Delaware.

PRELIMINARY STATEMENTS

A. DOE has been authorized to arrange for FFB (as that and other capitalized terms used herein without definition are defined in Annex A to this Agreement) to make loans to manufacturers of advanced technology vehicles and components pursuant to the Advanced Technology Vehicles Manufacturing Incentive Program, as set forth in Section 136 of the Energy Independence and Security Act of 2007.

B. The Borrower submitted an Application dated November 17, 2008, which was deemed substantially complete on December 15, 2008 and was amended and restated on May 4, 2009, for a multi-draw term loan facility to be authorized and approved by DOE under the ATVM Program, subject to the requirements of Section 136 and the Applicable Regulations (the "Application").

C. The Borrower and DOE entered into a Conditional Commitment Letter on June 23, 2009 pursuant to which DOE agreed to arrange for FFB to purchase Notes from the Borrower in an aggregate amount not to exceed $465,047,000 and to make Advances from time to time thereunder, in each case upon the terms and subject to the conditions of this Agreement and the other Loan Documents.

D. Subject to the terms and conditions hereof, DOE will, in connection with arranging financing for the Borrower from FFB, issue and deliver to FFB the Principal Instruments.

E. Pursuant to the terms of the Program Financing Agreement, DOE will be obligated to reimburse FFB for any liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the Notes or the related Note Purchase Agreement.

F. The Borrower's obligations to DOE and FFB will be secured by the Liens granted under the Security Documents, to the extent provided therein.

G. The parties hereto desire (i) to specify, among other things, the terms and conditions for (x) the delivery by DOE of the Principal Instruments required for FFB to purchase the Notes pursuant to the Note Purchase Agreement, (y) the delivery by DOE of Advance Request Approval Notices and (z) certain indemnity and reimbursement obligations of the Borrower to DOE and (ii) to provide for certain other matters related thereto.

NOW, THEREFORE, in consideration of the promises and other agreements herein contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND OTHER RULES OF CONSTRUCTION

1.1 Terms Generally. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in Annex A hereto.

1.2 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Agreement denoting one gender only shall be construed to include the other gender;

(b) when used in this Agreement, the words "including", "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Agreement, the words "herein", "hereby", "hereunder", "hereof", "hereto", "hereinbefore", and "hereinafter", and words of similar import, unless otherwise specified, shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(d) each reference in this Agreement to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(e) capitalized terms in this Agreement referring to any Person or party to any Loan Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(f) each reference in this Agreement to any Loan Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Loan Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(g) each reference in this Agreement to any Requirements of Law shall be construed as a reference to such Requirements of Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(h) each reference in this Agreement to any provision of any other Loan Document will include reference to any definition or provision incorporated by reference within that provision;

(i) except where expressly provided otherwise, whenever any matter is required to be satisfactory to, or determined or approved by, DOE, or DOE is required or permitted to exercise any discretion (including any discretion to waive, select, require, deem appropriate, deem necessary, permit, determine or approve any matter), the satisfaction, determination or approval of DOE, or the exercise by DOE of such discretion, shall be in its sole and absolute discretion;

(j) 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, Capital Stock, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights; and

(k) the word "will" shall be construed as having the same meaning and effect as the word "shall".

1.3 Definitions in Other Written Communications. Unless the contrary intention appears, any capitalized term used without definition in any notice or other written communication given under or pursuant to this Agreement shall have the same meaning in that notice or other written communication as in this Agreement.

1.4 Conflict with Funding Agreements. In the case of any conflict between the terms of this Agreement and the terms of any Funding Agreement (other than the Program Financing Agreement), the terms of such Funding Agreement, as between the Borrower and the Lender Parties party thereto, shall control, unless expressly stated to the contrary herein.

1.5 Accounting Terms; Calculations. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. If at any time any change in GAAP or in the policies, procedures or methodologies used in the application thereof from those used in the preparation of the Historical Financial Statements (collectively, the "Historical Principles") would affect the computation of any financial ratio or financial covenant set forth in any Loan Document (but without limiting the Borrower's obligation to comply with the restrictions on making such changes set forth in Section 9.15), and the Borrower or DOE shall so request, DOE and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change, provided that, both prior to and after such request is made until so amended, such ratio or requirement shall continue to be computed in accordance with Historical Principles and the Borrower shall provide to DOE reconciliation statements requested by DOE (reconciling the computations of such financial ratios and requirements from the then-current computations to the computations under the Historical Principles) in connection therewith. Financial Statements required to be delivered by the Borrower to DOE pursuant to Section 8.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation applied in a manner consistent with the Historical Principles except to the extent of any change in GAAP or any change in the application thereof that DOE was notified of in

accordance with Section 8.1(e) (and delivered together with the reconciliation statements provided for in Section 8.1(e)). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with the Historical Principles.

ARTICLE II

FUNDING

2.1 Loans.

(a) Purchase of Notes. Subject to the terms and conditions hereof and of the Funding Agreements, on the Principal Instrument Delivery Date, DOE agrees to deliver to FFB the Principal Instruments required, in accordance with Section 4.2 of the Note Purchase Agreement, in connection with the offer to FFB to purchase on the Financial Closing Date:

(i) Note P in an aggregate maximum principal amount not to exceed One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars ($101,186,000) (the "Project P Loan"); and

(ii) Note S in an aggregate maximum principal amount not to exceed Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars ($363,861,000) (the "Project S Loan", and together with the Project P Loan, collectively, the "Loans").

(b) Advance Request Approval Notice. Subject to the terms and conditions hereof and of the Funding Agreements, DOE agrees, no less than three (3) Business Days prior to each Requested Advance Date during the Availability Period, to deliver to FFB an Advance Request Approval Notice authorizing FFB to make advances of the Loans (the "Advances"), *provided* that, after giving effect to any Advances and the use of proceeds thereof:

(i) the aggregate amount of Advances made to the Borrower under the Notes does not exceed the Maximum Total Loan Amount;

(ii) the aggregate amount of Advances made to the Borrower under Note P (each, a "Project P Advance") does not exceed the maximum amount of Project P Advances permitted by Section 2.7; and

(iii) the aggregate amount of Advances made to the Borrower under Note S (each, a "Project S Advance") does not exceed the maximum amount of Project S Advances permitted by Section 2.7.

2.2 Loan Commitment Amount Reductions. The Borrower may, on not less than thirty (30) days prior written notice to DOE and upon the satisfaction of any consent

requirement or other applicable provisions of this Agreement and each Loan Document, permanently reduce the Loan Commitment Amount, in whole or in part, but only if:

(a) DOE is satisfied that the proposed reduction or cancellation would not cause a Default or an Event of Default;

(b) the Borrower shall have delivered to DOE, by an Acceptable Delivery Method, a certificate, in form and substance satisfactory to DOE, with respect to the matters set forth in clause (a) above; and

(c) to the extent permitted by applicable Requirements of Law, upon such cancellation or reduction, the Borrower shall pay all expenses and other amounts then due with respect to such cancellation or reduction under this Agreement.

Once reduced or canceled, the Loan Commitment Amount may not be increased.

2.3 Mechanics for Requesting Advances.

(a) Advance Requests. From time to time during the Availability Period, the Borrower may request Advances under the Funding Agreements by, not less than ten (10) Business Days prior to any Requested Advance Date (each, an "Advance Request Delivery Date"), (A) delivering, by an Acceptable Delivery Method, to DOE, an appropriately completed request with respect to such Advance or Advances signed by a Responsible Officer of the Borrower (each, an "Advance Request") which shall be substantially in the form of the document titled "Form of Advance Request" included in the Forms Supplement (the "Form of Advance Request") and in compliance with the requirements of Section 2.3(b), and (B) delivering, by an Acceptable Delivery Method, to DOE, and, by facsimile, to FFB an appropriately completed request for Advances required to be delivered pursuant to the terms of each Note signed by a Responsible Officer of the Borrower (each, an "FFB Advance Request") which shall be substantially in the form of Exhibit A to the Note Purchase Agreement (the "Form of FFB Advance Request"). The Borrower may request Advances no more frequently than once per calendar month.

(b) Contents of Advance Requests. Each Advance Request shall specify or include as an attachment each of the following (as contemplated by the Form of Advance Request):

(i) (A) the amount (if any) of the Advance requested under Note P and (B) the amount (if any) of the Advance requested under Note S; *provided* that in each of clauses (A) and (B), such amounts shall be in the minimum amounts required by this Agreement, the Note Purchase Agreement and the relevant Note;

(ii) the Requested Advance Date, which, subject to the requirements of Section 2.3(a), shall be any Business Day during the Availability Period;

(iii) the aggregate amount, on a prospective basis after giving effect to the requested Advances, of (A) all Advances outstanding under Note P (if any), (B) all Advances outstanding under Note S (if any) and (C) all Borrower Project Payments made by the Borrower with respect to each Project, *provided* that (x) the aggregate amount requested with respect to clauses (A) and (B) above may not in any event exceed the amount permitted pursuant to Sections 2.7 and 2.12 and (y) the aggregate Borrower Project Payments with respect to each Project shall be not less than the amount required pursuant to Sections 2.8 and 5.3(j);

(iv) a summary of the Eligible Project Costs being financed with the proceeds of the requested Advance or Advances, together with (x) copies of invoices or other reasonable documentation evidencing such Project Costs (or alternatively in the case of such invoices, a listing thereof which sets forth, for each invoice, the invoice number, date, vendor and amount and the portion of such amount that relates to Eligible Project Costs, it being understood that the Borrower shall deliver to DOE copies of such invoices promptly upon DOE's request), (y) a breakdown of the allocation of such Project Costs among any requested Site-Dependent and non-Site Dependent Advances and (z) an identification of any such Project Costs that are for equipment that has been the subject of a title transfer to CAEATFA together with a copy of the fully executed documentation required for the conveyance and reconveyance of title to such equipment pursuant to Section 9.5(q);

(v) a certification by a Responsible Officer of the Borrower that (A) the proceeds of the requested Project P Advances will be used to pay or reimburse the Borrower for Eligible Project P Costs incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the date of such Advance Request and (B) the proceeds of the requested Project S Advances will be used to pay or reimburse the Borrower for Eligible Project S Costs incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the date of such Advance Request, in each case in accordance with the Business Plan for the applicable Project;

(vi) either (A) a certification by a Responsible Officer of the Borrower that the most recent Project Forecasts previously delivered pursuant to this Section 2.3(b)(vi), Section 5.1(m) or Section 8.2(b) continue to be applicable, based on good faith estimates and assumptions made by management of the Borrower and that management of the Borrower believes that such Project Forecasts are still reasonable and attainable, or (B) in lieu of the certification described in clause (A), (x) at the Borrower's option or (y) upon DOE's request, an updated Project P Forecast and Project S Forecast, each substantially in the form of the document titled "Sample Project Forecast and Overrun Calculation" included in the Forms Supplement, together with a certification by a Responsible Officer of the Borrower that such Project Forecasts are based on good faith estimates and assumptions made by management of the Borrower and that management of the Borrower believes that such Project Forecasts are reasonable

and attainable; *provided* that, in either case, all Project Forecasts must be satisfactory to DOE (it being understood that a waiver, granted in DOE's sole discretion, of the requirements of this Section 2.3(b)(vi) in connection with any Advance shall not be deemed to indicate DOE's approval of any Project Forecast);

(vii) a certification by a Responsible Officer of the Borrower setting forth in reasonable detail (A) whether an Equity Offering has closed (x) in the case of the initial Advance Request, since the Principal Instrument Delivery Date or (y) for all subsequent Advance Requests, since the date of the previously delivered Advance Request (or, in either case (x) or (y), is expected to close prior to funding of the current Advance Request) and, if so, the facts necessary to determine compliance with Sections 2.12(d) and 9.27 in connection therewith; (B) the amount then on deposit in each subaccount of the Dedicated Account and a reconciliation of any changes in each such subaccount since the last Advance Request (both before and after giving effect to the provisions of Section 2.12); (C) the amount of any Undrawn Deferred Amounts relating to each Project both before and after giving effect to the Advance contemplated by such Advance Request; and (D) if such Advance is an Interim True-Up Advance, a statement to that effect together with a specific identification of the Deferred Requests to which such Interim True-Up Advance relates and the portion thereof required to be deposited into the Dedicated Account in accordance with Section 2.12(j); and

(viii) such other documentation, certificates and information specified in this Agreement (including Sections 5.3, 5.4 and 5.5, as applicable, and, prior to the Principal Instrument Delivery Date and the Financial Closing Date, Sections 5.1 and 5.2, respectively).

(c) Contents of FFB Advance Requests. Each FFB Advance Request shall contain all other information required by the Form of FFB Advance Request.

2.4 Mechanics for Funding Advances.

(a) Advance Funding.

(i) Satisfaction of Conditions. Promptly after receipt of an Advance Request complying with Sections 2.3(a) and (b), DOE shall review such Advance Request and the attachments thereto to determine whether all certificates and documentation required under Section 2.3 have been delivered to it. At such time as DOE has determined that it has received all such required certificates and documentation, but in any event not more than seven (7) Business Days after receipt of such Advance Request, DOE shall so notify FFB and the Borrower.

(ii) Advance Request Approval Notice. With respect to any Advance or Advances under the Funding Agreements, if DOE determines that all conditions precedent set forth in Sections 5.3 and 5.4, as applicable, in respect of the requested Advance or Advances have been satisfied (or waived in writing),

then no later than three (3) Business Days prior to the Requested Advance Date, DOE shall issue to FFB and the Borrower an Advance Request Approval Notice, subject to adjustment as provided in Section 2.12(f) to the extent applicable.

(iii) Funding. For any requested Advance for which an Advance Request Approval Notice has been issued pursuant to this Section 2.4(a) and for which no Drawstop Notice has been issued pursuant to Section 2.4(b), FFB shall fund such Advance on the Requested Advance Date in accordance with the Note Purchase Agreement and the relevant Note. Such funds shall be applied as specified in the Funding Agreements and in accordance with Section 2.4(d) hereof, *provided* that if any Drawstop Notice has been issued and is in effect on the Requested Advance Date with respect to any funds received by the Borrower, such funds shall be returned by the Borrower to FFB pursuant to Section 2.4(b).

(b) Drawstop Notices.

(i) Issuance. Following the issuance of any Advance Request Approval Notice by DOE pursuant to Section 2.4(a) and on or prior to the Requested Advance Date, DOE or FFB may, from time to time, issue a notice substantially in the form attached hereto as Exhibit C (a "Drawstop Notice") to the Borrower and to DOE or FFB, as the case may be, if and only if DOE or FFB, as the case may be, determines that:

(A) the conditions Sections 5.3 or 5.4, as applicable, the Note Purchase Agreement or the Notes with respect to such Advance or Advances are not met, or having been met, are no longer met; or

(B) to the extent the Advance Request Approval Notice has been issued for any Advance under the relevant Note and the Note Purchase Agreement, the conditions precedent to such Advance contained in such Note and the Note Purchase Agreement are not met, or having been met, are no longer met.

(ii) Consequences. If a Drawstop Notice is issued, FFB shall not be obligated to make the requested Advance or Advances set forth on such Drawstop Notice, *provided* that, if FFB makes any such Advance or Advances to the Borrower following the issuance of a Drawstop Notice, the Borrower shall return such Advance or Advances to FFB immediately upon receipt thereof, and *provided further* that, any amount required to be returned by the Borrower pursuant to this Section 2.4(b)(ii) shall accrue interest at the Late Charge Rate from the date such Advance or Advances are made until such Advance or Advances are returned. Following the return of such Advance or Advances, FFB shall deliver an invoice to the Borrower setting forth the interest due and payable with respect to such returned amount. The Borrower hereby agrees promptly, but in no event later than five (5) Business Days following delivery of such invoice, to pay such interest amounts as directed by FFB.

(c) No Liability. (i) The Borrower acknowledges and agrees that DOE shall only be required to use reasonable efforts to provide FFB with the necessary Advance Requests and Advance Request Approval Notices within the time-frames specified in Sections 2.4(a)(i) and (ii), but DOE shall in any event ensure that the FFB receives all such Advance Requests and Advance Request Approval Notices as soon as practicable following receipt from the Borrower of the applicable Advance Requests and necessary certificates and other documentation specified above (subject to the Borrower satisfying all necessary conditions precedent specified in this Agreement, including, without limitation Sections 5.3 and 5.4, as applicable and, prior to the Principal Instrument Delivery Date and the Financial Closing Date, Sections 5.1 and 5.2, respectively).

(ii) Subject to Section 2.4(c)(i), no Lender Party shall have any liability for any action taken (including the delivery of a Drawstop Notice) or omitted to be taken (including the failure to fund any Advance or Advances following the issuance of a Drawstop Notice) or for any loss or injury resulting from its actions or its performance or lack of performance of any of its other duties hereunder if such Lender Party acted reasonably in exercising or interpreting its statutory authority and applicable regulations in taking any such action, omitting to take any action or performing its duties hereunder. Except to the extent, if any, set forth in Section 2.4(c)(i), in no event shall any Lender Party be liable (A) for acting in accordance with or relying upon any entitlement order, instruction, notice, demand, certificate or document from the Obligors or any entity acting on behalf of the Obligors, (B) for any indirect, consequential, punitive or special damages, regardless of the form of action and whether or not any such damages were foreseeable or contemplated, or (C) in the case of FFB or any subsequent holder of any Note, for acting in accordance with or relying upon any Drawstop Notice issued by DOE.

(iii) Notwithstanding anything contained in this Agreement to the contrary, no Lender Party shall incur any liability to the Borrower or any Affiliate thereof or to any other Lender Party for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any circumstance beyond the control of such Lender Party or its agents (including any act or provision of any present or future law or regulation of any Governmental Authority (other than FFB or DOE, unless DOE or FFB, as the case may be, is issuing such regulation in compliance with Requirements of Law), any act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, the unavailability of the Federal Reserve Bank wire, disruption or failure of the Treasury Financial Communications System or facsimile or other wire or communication facility, closure of the Federal Government, unforeseen or unscheduled closure or evacuation of such Lender Party's office or any other similar event) (each such circumstance, a "Lender Party Force Majeure Event"); it being understood that any such Lender Party shall resume performance hereunder as soon as such

Lender Party Force Majeure Event ceases to prevent such Lender Party from performing hereunder.

(d) Disbursement of Proceeds. (i) The Borrower shall apply (x) Project P Loan proceeds solely to pay, or be reimbursed for, those portions of the Total Project P Costs that are Eligible Project P Costs in accordance with the Business Plan, including (but only to the extent provided in this Agreement) Excess Cost Overruns, and (y) Project S Loan proceeds solely to pay, or be reimbursed for, those portions of the Total Project S Costs that are Eligible Project S Costs in accordance with the Business Plan, including (but only to the extent provided in this Agreement) Excess Cost Overruns.

(ii) For the avoidance of doubt, in no event will the proceeds of any Loan be (A) applied towards any portion of Total Project Costs incurred prior to December 15, 2008, (B) used to pay interest payments on the Loans, administrative or other fees relating to the Loans or any other amounts under the Loan Documents or (C) applied to finance or acquire, or reimburse the Borrower for the cost of, any property unless concurrently therewith the Collateral Trustee obtains a First Priority Lien on such property (it being understood for purposes of this clause (C) that, in the case of any such cost that is part of an Eligible Progress Payment, the property acquired with the proceeds of the Loan used to pay such cost shall consist of all contract rights, claims against the vendor and all other rights of the Borrower (including any rights in the related equipment) that arise in connection with such Eligible Progress Payment, and all such property shall be deemed to be Program Assets for all purposes of this Agreement).

(iii) The Borrower shall use proceeds of the Advances in accordance with the terms of this Agreement to pay Eligible Costs by making all such disbursements as are necessary directly to those persons to whom the Borrower is obligated to make payment or retaining payment for Eligible Costs in the nature of payroll costs or similar internal costs that are being funded.

(iv) The Borrower acknowledges and agrees that notwithstanding any other provision of this Agreement to the contrary, (x) DOE shall not be required to approve any Advance unless the same has been requested and will be applied to pay the costs of services rendered, materials delivered and required deposits incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the date of any Advance Request, and (y) no costs or expenses relating to any Project shall constitute Eligible Costs to the extent such costs or expenses were funded with Federal Funding (other than the Loans).

(v) Pending use as set forth in clauses (i) through (iv) above, the proceeds of any Advance may be invested only in Limited Cash Equivalents (it being understood that this Section 2.4(d)(v) shall not apply to the proceeds of any Advance to the extent funded to reimburse the Borrower for Eligible Project Costs paid by the Borrower prior to the funding of such Advance).

2.5 Advance Requirements under the Funding Agreements. Notwithstanding anything to the contrary contained in this Article II, the Borrower shall comply with each disbursement requirement set forth in the Funding Agreements. Unless otherwise specified in the Funding Agreements, all determinations to be made with respect to the Funding Agreements shall be made by DOE.

2.6 No Approval of Work. The making of any Advance or Advances under the Loan Documents shall not be deemed an approval or acceptance by any Lender Party of any work, labor, supplies, materials or equipment furnished or supplied with respect to any Project.

2.7 Determination of Advance Amounts.

(a) Maximum Loan Amounts. The aggregate principal amount of the Loans from time to time outstanding shall not be more than:

(i) with respect to the Project P Loan, the lesser of (x) eighty percent (80%) of all Eligible Project P Costs (excluding Excess Cost Overruns unless and to the extent provided for in Section 2.9(c)(i)(B) or in an approved Corrective Plan) incurred as of any date of determination and (y) One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars ($101,186,000) (such lesser amount, the "Project P Maximum Loan Amount"); *provided, however*, that subject to the Project P Maximum Loan Amount and Sections 2.7(b) and 2.12, Advances shall be in the following amounts (but only if, in each case, all applicable conditions have been met):

(A) initially in an amount equal to one hundred percent (100%) of Eligible Project P Costs incurred on or after December 15, 2008;

(B) reduced to an amount equal to eighty percent (80%) of Eligible Project P Costs incurred during the period beginning on February 1, 2010, in the event Borrower has not satisfied all conditions precedent to a Site-Dependent Advance of the Project P Loan, and ending on the date that such conditions are satisfied; *provided, however*, that in no event shall DOE or FFB be required to make any Advances of the Project P Loan after June 1, 2010 unless all conditions precedent to a Site-Dependent Advance of the Project P Loan, as set forth in Section 5.4, have been satisfied; and

(C) after such all conditions precedent to a Site-Dependent Advance of the Project P Loan have been satisfied, in an amount equal to one hundred percent (100%) of Eligible Project P Costs thereafter incurred.

In addition, subject to the Project P Maximum Loan Amount and Sections 2.7(b) and 2.12 (and only if all applicable conditions have been met):

(X) upon the satisfaction of the conditions precedent to a Site-Dependent Advance of the Project P Loan, a single Advance shall be made pursuant to an Advance Request, in an amount equal to the excess, if any, of (I) one hundred percent (100%) of all Eligible Project P Costs incurred on or after December 15, 2008, as to which an Advance of less than one hundred percent (100%) was made pursuant to clause (B) of this Section 2.7(a)(i) over (II) the amount of such Advance actually made pursuant to such clause; and

(Y) upon Final Completion of Project P, a single Advance (the "Project P Final True-Up Advance") shall be made pursuant to an Advance Request, in an amount equal to the excess, if any, of (I) the least of (A) eighty percent (80%) of all Eligible Project P Costs, (B) one hundred percent (100%) of all Eligible Project P Costs incurred on or after December 15, 2008, and (C) One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars ($101,186,000) over (II) the aggregate amount of all Advances made with respect to Project P (including all Interim True-Up Advances with respect to Project P other than an Interim True-Up Advance to be made as part of such Project P Final True-Up Advance);

(ii) with respect to the Project S Loan, the lesser of (x) eighty percent (80%) of all Eligible Project S Costs (excluding Excess Cost Overruns unless and to the extent provided for in Section 2.9(c)(i)(B) or in an approved Corrective Plan) incurred as of any date of determination and (y) Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars ($363,861,000) (such lesser amount, the "Project S Maximum Loan Amount"); *provided, however*, that subject to the Project S Maximum Loan Amount and Sections 2.7(b) and 2.12, Advances shall be in the following amounts (but only if, in each case, all applicable conditions have been met):

(A) initially in an amount equal to ninety-two percent (92%) of Eligible Project S Costs incurred on or after December 15, 2008;

(B) reduced to an amount equal to seventy-two percent (72%) of Eligible Project S Costs incurred during the period beginning on October 1, 2010, in the event Borrower has not satisfied all conditions precedent to a Site-Dependent Advance of the Project S Loan, and ending on the date that such conditions are satisfied; *provided, however*, that in no event shall DOE or FFB be required to make any Advances of the Project S Loan after January 1, 2011 unless all conditions precedent to a Site-Dependent Advance of the Project S Loan, as set forth in Section 5.4, have been satisfied, and

(C) after all such conditions precedent to a Site-Dependent Advance of the Project S Loan have been satisfied, in an

amount equal to ninety-two percent (92%) of Eligible Project S Costs thereafter incurred.

In addition, subject to the Project S Maximum Loan Amount and Sections 2.7(b) and 2.12 (and only if all applicable conditions have been met):

(X) upon the satisfaction of the conditions precedent to a Site-Dependent Advance of the Project S Loan, a single Advance shall be made in an amount equal to the excess, if any, of (I) ninety-two percent (92%) of all Eligible Project S Costs incurred on or after December 15, 2008, as to which an Advance of less than ninety-two percent (92%) was made pursuant to clause (B) of this Section 2.7(a)(ii) over (II) the amount of such Advance actually made pursuant to such clause; and

(Y) upon Final Completion of Project S, a single Advance (the "Project S Final True-Up Advance") shall be made in an amount equal to the excess, if any, of (I) the least of (A) eighty percent (80%) of all Eligible Project S Costs, (B) one hundred percent (100%) of all Eligible Project S Costs incurred on or after December 15, 2008, and (C) Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars ($363,861,000) over (II) the aggregate amount of all Advances made with respect to Project S (including all Interim True-Up Advances with respect to Project S other than an Interim True-Up Advance to be made as part of such Project S Final True-Up Advance);

(b) Historical Costs.

(i) For purposes of determining the percentages contained in Section 2.7(a) the parties have assumed that the Historical Costs (as defined in clause (iii) below) on account of Project P consist of an amount equal to Fifty-Two Million Five Hundred Ten Thousand and 00/100 Dollars ($52,510,000) and that the Historical Costs on account of Project S consist of an amount equal to Fifty-Seven Million Three Hundred Thirty-Two Thousand and 00/100 Dollars ($57,332,000) (each such amount, an "Historical Costs Assumption").

(ii) In the event DOE determines in its sole discretion that the Historical Costs Assumption with respect to either Project does not accurately reflect the actual Historical Costs incurred by the Borrower with respect to such Project, (A) the percentages set forth in Section 2.7(a), shall be modified in DOE's sole discretion to reflect the percentages which would have been applied had such Historical Costs Assumption accurately reflected the actual Historical Costs with respect to such Project, (B) the next Advance(s) shall be reduced by an amount equal to (x) the aggregate amount of Advances theretofore made (as determined in accordance with the incorrect Historical Costs Assumption) minus (y) the aggregate amount of such Advances that would have been made had they been determined in accordance with the actual Historical Costs, and (C) the

Borrower shall certify that the Cash Equity Condition is being satisfied notwithstanding the effects of the foregoing clauses (A) and (B).

(iii) The term "Historical Costs" means those Total Project Costs incurred prior to December 15, 2008 that, if they had been incurred instead on or after December 15, 2008, would have been eligible for funding as Eligible Project Costs.

2.8 Borrower Commitments; Cash Equity Condition.

(a) Project P Borrower Commitment. The Borrower hereby commits to pay all costs and expenses incurred to complete Project P in excess of the amounts permitted to be advanced as of any date under the terms of the Project P Loan. Immediately prior to FFB making any Advance in connection with the Project P Loan, the Borrower shall make payments and/or provide evidence of payments made on account of Total Project P Costs (the "Project P Borrower Payments"), on the terms and conditions set forth in the Loan Documents, in an aggregate amount (the "Project P Borrower Commitment") equal to (i) all Total Project P Costs incurred as of the date of such determination ***minus*** (ii) the Project P Maximum Loan Amount.

(b) Project S Borrower Commitment. The Borrower hereby commits to pay all costs and expenses incurred to complete Project S in excess of the amounts permitted to be advanced as of any date under the terms of the Project S Loan. Immediately prior to FFB making any Advance in connection with the Project S Loan, the Borrower shall make payments and/or provide evidence of payments made on account of Total Project S Costs (the "Project S Borrower Payments", and together with the Project P Borrower Payments, the "Borrower Project Payments"), on the terms and conditions set forth in the Loan Documents, in an aggregate amount (the "Project S Borrower Commitment"; and together with the Project P Borrower Commitment, the "Borrower Commitments") equal to (i) all Total Project S Costs incurred as of the date of such determination ***minus*** (ii) an amount equal to the Project S Maximum Loan Amount.

(c) Cash Equity Condition. The Borrower shall at all times satisfy the "Cash Equity Condition", which shall mean that the Borrower has and shall for the remaining Availability Period have an amount of available cash and Cash Equivalents (taking into account current cash flows and cash on hand (including any amounts on deposit in the Dedicated Account), and reasonable projections of future generation of net cash from operations, losses and expenditures during the Availability Period, but specifically excluding loan proceeds (other than, without duplication, any Undrawn Deferred Amounts or any Interim True-Up Advances) and cash that the Borrower is restricted from using for Total Project P Costs or Total Project S Costs by contract, legal requirement or otherwise) ("Cash Equity") not less than one hundred five percent (105%) of the aggregate amounts required to fund the remaining Borrower Commitments through Final Completion of both Project P and Project S. The Borrower shall certify to DOE in connection with each Advance that the Cash Equity Condition is then being satisfied. If at any time the Cash Equity Condition is not being satisfied, then the Borrower shall

comply with the procedures set forth in Section 2.9(c) for submission and approval of a Corrective Plan.

2.9 Cost Overruns.

(a) Definitions.

"Budgeted Project P Contingency Amount" means the Project P Contingency Amount shown in the Project P Budget.

"Budgeted Project S Contingency Amount" means the Project S Contingency Amount shown in the Project S Budget.

"Budgeted Total Costs" means, as applicable, the Total Project P Costs or Total Project S Costs shown in the Project P Budget or Project S Budget, including the Budgeted Project P Contingency Amount or the Budgeted Project S Contingency Amount.

"Forecasted Total Costs" means, as of the applicable Measurement Date, the Paid or Committed Costs with respect to Project P or Project S, as applicable, plus the Remaining Uncommitted Costs for such Project, as shown in the most recent Project P Forecast or Project S Forecast, as applicable, approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved).

"Measurement Date" means the last day of each fiscal quarter (or, at DOE's sole option, the date on which an updated Project Forecast is submitted to DOE in connection with an Advance Request if such Project Forecast has not been approved by DOE).

"Net Budgeted Total Costs" means the Budgeted Total Costs with respect to Project P or Project S, as applicable, excluding the Budgeted Project P Contingency Amount or the Budgeted Project S Contingency Amount.

"Net Forecasted Total Costs" means, as of the applicable Measurement Date, the Paid or Committed Costs with respect to Project P or Project S, as applicable, plus the Net Remaining Uncommitted Costs for such Project, as shown in the most recent Project P Forecast or Project S Forecast, as applicable, approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved).

"Net Remaining Uncommitted Costs" means, as of the applicable Measurement Date, the costs required to complete Project P or Project S, as applicable, as shown in the most recent Project P Forecast or Project S Forecast approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved), excluding the

Remaining Project P Contingency Amount or the Remaining Project S Contingency Amount.

"Paid or Committed Costs" means, as applicable, Total Project P Costs or Total Project S Costs that either have been paid in full or otherwise committed pursuant to binding agreements with suppliers, contractors or other third parties delivering materials or services in connection with Project P or Project S.

"Remaining Project P Contingency Amount" means the Project P Contingency Amount shown in the most recent Project P Forecast approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved).

"Remaining Project S Contingency Amount" means the Project S Contingency Amount shown in the most recent Project S Forecast approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved).

"Remaining Uncommitted Costs" means, as of the applicable Measurement Date, the costs required to complete Project P or Project S, as applicable, as shown in the most recent Project P Forecast or Project S Forecast approved by DOE (or, at DOE's sole option, the most recent Project P Forecast or Project S Forecast submitted for approval but not approved), including the Remaining Project P Contingency Amount or the Remaining Project S Contingency Amount.

(b) Testing of Excess Cost Overruns.

(i) Project P Excess Cost Overruns. On each Measurement Date (as reported fifteen (15) business days after such Measurement Date), the Borrower shall calculate the Remaining Project P Contingency Amount as a percentage of the Net Remaining Uncommitted Costs (such percentage, the "Project P Contingency Percentage") with respect to Project P. In the event that the Project P Contingency Percentage is less than the percentage (the "Project P Required Contingency Percentage") set forth under such heading in the following schedule opposite the applicable percentage of Net Forecasted Total Costs for Project P constituting Paid or Committed Costs:

Percentage of Net Forecasted Total Costs for Project P constituting Paid or Committed Costs	Project P Required Contingency Percentage
50% or less	7.5%
More than 50%	5.0%

then a "Project P Excess Cost Overrun" shall exist in an amount equal to the amount that would be required to be added to the Remaining Project P Contingency Amount such that the Project P Contingency Percentage would equal

the Project P Required Contingency Percentage as of such Measurement Date, and the provisions of Section 2.9(c) shall apply. Such calculations shall be made in accordance with the document titled "Sample Project Forecast and Overrun Calculation" included in the Forms Supplement.

(ii) Project S Excess Cost Overruns. On each Measurement Date (as reported fifteen (15) business days after such Measurement Date), the Borrower shall calculate the Remaining Project S Contingency Amount as a percentage of the Net Remaining Uncommitted Costs (such percentage, the "Project S Contingency Percentage") with respect to Project S. In the event that the Project S Contingency Percentage is less than the percentage (the "Project S Required Contingency Percentage") set forth under such heading in the following schedule opposite the applicable percentage of Net Forecasted Total Costs for Project S constituting Paid or Committed Costs:

Percentage of Net Forecasted Total Costs for Project S constituting Paid or Committed Costs	Project S Required Contingency Percentage
50% or less	7.5%
More than 50%	5.0%

then a "Project S Excess Cost Overrun" shall exist in an amount equal to the amount that would be required to be added to the Remaining Project S Contingency Amount such that the Project S Contingency Percentage would equal the Project S Required Contingency Percentage as of such Measurement Date, and the provisions of Section 2.9(c) shall apply. Such calculations shall be made in accordance with the document titled "Sample Project Forecast and Overrun Calculation" included in the Forms Supplement.

(c) Corrective Plan.

(i) In the event of a Project P Excess Cost Overrun or a Project S Excess Cost Overrun (each, an "Excess Cost Overrun"), the following terms and conditions shall apply:

(A) the Borrower shall promptly (and in no event more than fifteen (15) Business Days after the applicable Measurement Date) notify DOE in writing of such Excess Cost Overrun, and within ten (10) Business Days thereafter shall deliver a proposed "Action Plan" demonstrating any projected cost savings and the amount required to be contributed by the Borrower to satisfy the Excess Cost Overrun;

(B) If the Borrower shall commit in writing in connection with the Action Plan to pay from Cash Equity the amount of the Excess Cost Overrun over the ensuing ninety (90) day period (or from time to time as and when the same becomes due) and provide evidence of the availability of Cash Equity for such payments satisfactory to DOE (the "Correction by Commitment Condition"), then DOE shall approve

Advances in the amounts otherwise required under this Agreement as if there were no such Excess Cost Overrun, and the Borrower shall provide cash to cover Excess Cost Overruns required to be paid with cash in respect of each Advance;

(C) If the Borrower fails to meet the Correction by Commitment Condition in respect of an Excess Cost Overrun, or in the event at any time the Cash Equity Condition is not being satisfied, the Borrower shall submit to DOE not later than thirty (30) days following the applicable date of determination a written plan of corrective action intended to satisfy such Excess Cost Overrun or the failure of the Cash Equity Condition, either through obtaining additional equity investment, through generation of net cash from operations, or achieving cost savings under other line items in the applicable Project Budget or otherwise (a "Corrective Plan"), together with such documentation supporting such Corrective Plan as may reasonably be required by DOE;

(D) DOE shall either approve or disapprove, in its sole discretion (but subject to the safe harbor provisions of Section 2.10), any Corrective Plan within thirty (30) days following the date upon which it receives such Corrective Plan from the Borrower, together with any documentation supporting such Corrective Plan reasonably required by DOE; and

(E) In the event DOE disapproves a Corrective Plan, the parties shall cooperate in good faith to develop a Corrective Plan satisfactory to DOE in its sole discretion.

(ii) Adjustment of Remaining Contingency Amounts; Running Balance Calculation. The following calculations shall be made in accordance with the document titled "Sample Project Forecast and Overrun Calculation" included in the Forms Supplement.

(A) Permitted Overruns. Any amounts the Borrower commits to pay with respect to a Project pursuant to a Correction by Commitment Condition or a Corrective Plan are "Permitted Overruns." The initial Permitted Overrun is the "Initial Contribution"

(B) Permitted Corrections. After the Initial Contribution (and thereafter only assuming there is a positive balance in the Running Balance Calculation as set forth below), any amount by which the Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, exceeds the amount of contingency required as calculated using the applicable Required Contingency Percentage, once reviewed and approved by the DOE, is a "Permitted Correction". In the event of a Permitted Correction, the parties shall adjust

any prior Correction by Commitment Condition or Corrective Plan to their mutual satisfaction.

(C) Any Permitted Overruns shall be added to Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, in the subsequent Project P Forecast or Project S Forecast. Any Permitted Corrections shall be subtracted from Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, in the subsequent Project P Forecast or Project S Forecast.

(D) Beginning on the first Measurement Date after the Borrower has made the Initial Contribution, the Borrower shall provide DOE with the Running Balance Calculation. The "Running Balance Calculation" shall be a running balance of all Permitted Overruns less all Permitted Corrections.

(d) Consequence of Cost Overrun or Cash Equity Condition Event. In the event of an Excess Cost Overrun or the failure of the Cash Equity Condition that is continuing, then (A) DOE shall not be required to approve any further Advances unless and until the Borrower shall complete an Excess Cost Overrun Cure, (B) a Default that is not yet an Event of Default shall be deemed to exist until either the Borrower shall complete an Excess Cost Overrun Cure or an Event of Default shall exist and (C) if the Borrower shall fail to complete such Excess Cost Overrun Cure in a timely manner, an Event of Default shall exist. For purposes of this Section 2.9(d), the Borrower shall complete an "Excess Cost Overrun Cure" if (i) either (x) the Borrower satisfies the Correction by Commitment Condition (solely with respect to an Excess Cost Overrun) or (y) a Corrective Plan to remedy such Excess Cost Overrun or Cash Equity Condition is approved by DOE as provided above, and (ii) the Borrower thereafter complies with such Correction by Commitment Condition or such Corrective Plan, as applicable (it being understood that compliance with a Correction by Commitment Condition or Corrective Plan shall include making any payments required from time to time thereunder). In the event of an Excess Cost Overrun, any Advances approved by DOE shall be made contingent on the Borrower paying any additional amounts required to be paid by the Borrower in connection with the Correction by Commitment Condition or such approved Corrective Plan and, to the extent provided in the Correction by Commitment Condition or such approved Corrective Plan, the amount of each such Advance as otherwise determined in accordance with this Agreement shall be reduced by such additional amounts payable by the Borrower.

2.10 Safe Harbor Corrective Plans. In order to provide a "safe harbor" to the Borrower in devising a Corrective Plan to address the amount by which the Borrower fails to meet the Correction by Commitment Condition in respect of an Excess Cost Overrun or fails to meet the Cash Equity Condition (any such amount, a "Project Shortfall"), and without limiting DOE's discretion in considering any other Corrective Plan (and without prejudice thereto), DOE agrees that it will approve, in accordance with Section 2.9(c)(i)(D), a Corrective Plan (each, a "Safe Harbor Corrective Plan") received from the Borrower in a timely manner, to address a

particular Project Shortfall, which Safe Harbor Corrective Plan shall require a cash contribution of equity to be received by the Borrower in an amount at least equal to such Project Shortfall, which contribution may be in consideration of the issuance of Capital Stock of the Borrower on terms that comply with the applicable provisions of the Loan Documents (including the anti-dilution provisions of the Warrants); provided, that (i) neither the Borrower or any of its Subsidiaries shall incur or otherwise become liable (directly or indirectly) for any Indebtedness in respect of such contribution or such Capital Stock, whether on the basis of subrogation or otherwise, and (ii) until Final Completion of both Projects, the proceeds of any such contribution may be used only to pay Total Project Costs for the Projects (or, in the case of a Corrective Plan to address an Excess Cost Overrun, used only to pay Total Project Costs for the Project giving rise to such Excess Cost Overrun), and not for any other purpose.

2.11 DOE's Consultant.

(a) DOE reserves the right to retain independent consultants (financial, engineering and otherwise) to review Advance Requests, verify the Borrower's application of the proceeds of the Loans, confirm the Borrower's completion of the Milestones and perform such other similar tasks in connection with the administration of the Loans as may be required by DOE (any such independent consultant, "DOE's Consultant").

(b) The Borrower shall, and shall cause each of its Subsidiaries to, (i) cooperate in all respects with DOE's Consultant (if DOE elects to retain one in accordance with Section 2.11(a)) and (ii) ensure that DOE's Consultant is provided with all information requested and reasonably required by DOE's Consultant and ensure that any information that it may supply to DOE's Consultant is accurate and not, by omission of information or otherwise, misleading in any material respect at the time such information is provided.

2.12 Dedicated Account.

(a) Establishment of Account. On the Principal Instrument Delivery Date, the Borrower shall establish, and thereafter maintain, with the Collateral Trustee (or an Affiliate thereof designated by the Collateral Trustee for this purpose) a separately identifiable deposit or securities account in the name of the Borrower entitled the "ATVM Tesla Dedicated Account" (the "Dedicated Account"). The Dedicated Account shall be pledged to the Collateral Trustee for the benefit of the Secured Parties pursuant to the Security Agreement and shall be subject to a Blocked Account Control Agreement. Amounts on deposit in the Dedicated Account may not be withdrawn by the Borrower except as provided in this Section 2.12. Any permitted withdrawals may only be made by delivery to the Collateral Trustee of an appropriately completed withdrawal request substantially in the form attached to Exhibit P hereto which has been signed by a Responsible Officer of the Borrower and countersigned by DOE (a "Withdrawal Request") and any permitted transfers may only be made by delivery to the Collateral Trustee of an appropriately completed transfer request substantially in the form attached to Exhibit P hereto which has been signed by a Responsible Officer of the Borrower (a "Transfer Request").

(b) Administrative Subaccounts. The Borrower shall track amounts deposited into and withdrawn from the Dedicated Account on the basis of the following administrative subaccounts within the Dedicated Account:

(i) an "Equity Proceeds Subaccount" into which a portion of the proceeds from each Equity Offering shall be deposited to the extent provided in Section 2.12(d);

(ii) two "Interim True-Up Subaccounts", one for each Project, into which the proceeds of Interim True-Up Advances shall be deposited to the extent provided in Section 2.12(j);

(iii) two "Designated Overrun Subaccounts", one for each Project, to which any Designated Overrun Amounts for such Project shall be transferred as provided in Section 2.12(e); and

(iv) an "Investment Earnings Subaccount" into which all earnings on temporary investments in the Dedicated Account shall be deposited as provided in Section 2.12(c).

(c) Temporary Investments. Pending use as provided in this Section 2.12, the Borrower may cause amounts on deposit in the Dedicated Account to be invested in Limited Cash Equivalents so long as any such investments mature not later than the date on which such funds need to be available in accordance with this Section 2.12. Any interest or dividends earned on such investments shall be deposited into the Investment Earnings Subaccount. Any balance in the Investment Earnings Subaccount may be withdrawn by the Borrower from time to time so long as no Default or Event of Default has occurred and is continuing (and the Borrower so certifies in writing to DOE at the time the applicable Withdrawal Request is submitted to DOE for review and countersignature). Neither the Collateral Trustee nor any other Secured Party shall be responsible for any diminution in funds resulting from such investments or any liquidation thereof prior to maturity or shall have any obligation to invest any amounts in the Dedicated Account.

(d) Equity Proceeds. No later than one (1) Business Day following the closing of any Equity Offering that closes prior to the Final Completion of both Projects and the full funding of the Initial Debt Service Account in accordance with Section 2.13(c), the Borrower shall deposit into the Equity Proceeds Subaccount 50% of the Net Offering Proceeds received by the Borrower in connection with such Equity Offering in accordance with Section 9.27 until the total amount that has been deposited into the Equity Proceeds Subaccount pursuant to this Section 2.12(d) equals $100,000,000.

(e) Availability for Excess Cost Overruns. If there are any Excess Cost Overruns with respect to a Project at any time when any amounts are on deposit in the Equity Proceeds Subaccount or in the Interim True-Up Subaccount for such Project (collectively, the "Applicable Subaccounts"), the Borrower may designate all or any

portion of such amounts as a source of cash for purposes of completing an Excess Cost Overrun Cure in accordance with Section 2.9. Such designation shall be effected by transferring the designated amounts (the "Designated Overrun Amounts") into the Designated Overrun Subaccount for such Project, *first*, from amounts then available in the Equity Proceeds Subaccount and, *second*, from amounts then available in the Interim True-Up Subaccount for such Project. Such Designated Overrun Amounts may be withdrawn by the Borrower for use to fund such Excess Cost Overruns in accordance with such Excess Cost Overrun Cure if the Cash Equity Condition is met at such time after giving effect to such withdrawal and no Default or Event of Default has occurred and is continuing (and the Borrower so certifies to DOE in writing at the time the applicable Withdrawal Request is submitted to DOE for review and countersignature). All Designated Overrun Amounts shall be used for such purpose prior to any further Advances being made with respect to such Project.

(f) Deferral of Certain Advance Requests. If the Borrower wishes to submit an Advance Request with respect to a Project (other than for a True-Up Advance) at a time when there are any amounts on deposit in the Applicable Subaccounts for such Project, the Borrower shall divide such Advance Request into two parts (the "Current Request" and the "Deferred Request", respectively). The portion requested in the Deferred Request (the "Deferred Amount") shall equal the lesser of (x) 50% of the amount of such Advance Request and (y) the amounts then on deposit in the Applicable Subaccounts for such Project (after giving effect to any concurrent Interim True-Up Advance Request and any transfer of Designated Overrun Amounts), except as provided in Section 2.12(l). The portion requested in the Current Request shall equal the balance of such Advance Request. The Current Request and the Deferred Request shall each comply with the requirements of Section 2.3, with an applicable amount of Eligible Project Costs specifically identified to each. DOE's obligation under Section 2.4 to issue an Advance Request Approval Notice to FFB with respect to such Advance Request if DOE confirms that all conditions to borrowing have been met shall be limited to the portion requested in the Current Request. Further action on the Deferred Amount shall be deferred until it is resubmitted as a new Advance (an "Interim True-Up Advance") in accordance with Section 2.12(i). Except in connection with such an Interim True-Up Advance, any Eligible Project Costs that have been the basis for any Current Request or Deferred Request cannot be the basis for any other Advance Request.

(g) Withdrawal Requests for Deferred Amounts. The Borrower may include with its submission of any Deferred Request a completed Withdrawal Request (subject to DOE countersignature) for an amount up to the related Deferred Amount to be withdrawn, *first*, from amounts then available in the Equity Proceeds Subaccount and, *second*, from amounts then available in the Interim True-Up Subaccount for such Project; *provided* that the amount so requested to be withdrawn shall not exceed the aggregate amount then on deposit in the Applicable Subaccounts for such Project (after giving effect to any concurrent Interim True-Up Advance Request and any transfer of Designated Overrun Amounts). Promptly upon the Requested Advance Date for the related Current Request, if the Advance Request Approval Notice relating thereto has been issued to FFB and no Drawstop Notice has been issued to the Borrower, DOE shall countersign such Withdrawal Request.

(h) Undrawn Deferred Amounts. As of any date of determination, any Deferred Amounts for which an Interim True-Up Advance has not yet been made on or before such date are referred to as "Undrawn Deferred Amounts". For purposes of the Project Maximum Loan Amount for a Project (when such term is used in connection with any Advance for such Project other than a True-Up Advance), all Undrawn Deferred Amounts relating to such Project shall be taken into account as though an Advance or Advances had been made for such Undrawn Deferred Amounts. For purposes of the Maximum Total Loan Amount (when such term is used in connection with any Advance other than a True-Up Advance), all Undrawn Deferred Amounts relating to both Projects shall be taken into account as though Advances had been made for such Undrawn Deferred Amounts.

(i) Timing of Interim True-Up Advances. The Borrower shall not be entitled to submit a new Advance Request (an "Interim True-Up Advance Request") for an Interim True-Up Advance in the amount of the Undrawn Deferred Amounts relating to any Project as of any date unless and until one of the following conditions is met as of such date prior to the end of the Availability Period (and all other applicable conditions to borrowing set forth in Article V have been met at that time):

(i) the balances in both the Equity Proceeds Subaccount and the Interim True-Up Subaccount for such Project have been reduced to zero (or, in the case of such Interim True-Up Subaccount, would have been reduced to zero by a concurrent Withdrawal Request contemplated by Section 2.12(g)); or

(ii) such Interim True-Up Advance is to be made as part of the Final True-Up Advance for such Project.

For the avoidance of doubt, more than one Interim True-Up Advance Request may be submitted for a Project during the Availability Period so long as, with respect to each such submission, one of the conditions set forth in either clause (i) or (ii) of this Section 2.12(i) is met on such date and the amount of the Interim True-Up Advance requested in such submission does not exceed the aggregate amount of the Undrawn Deferred Amounts relating to such Project as of such date. Each Interim True-Up Advance Request shall identify with specificity the Deferred Requests to which it relates.

(j) Application of Interim True-Up Advance Proceeds. Unless made as part of the Final True-Up Advance for a Project, the proceeds of an Interim True-Up Advance relating to such Project shall be applied as follows:

(i) the following amount shall be deposited into the Interim True-Up Subaccount for such Project: the lesser of (x) 30% of the aggregate amount of the remaining costs required to complete such Project (whether committed or uncommitted) as shown in the most recent Project Forecast for such Project approved by DOE (or, at DOE's sole option, the most recent Project Forecast submitted for approval for such Project but not approved), including the Remaining Project P Contingency Amount or Remaining Project S Contingency

Amount, as applicable for such Project, and (y) (A) $100,000,000 *minus* (B) any balance at that time in the Interim True-Up Subaccount for the other Project; and

(ii) the balance shall be available to the Borrower to pay, or be reimbursed for, a corresponding portion of the Eligible Project Costs for such Project that were the subject of the related Deferred Requests.

(k) Withdrawals Upon Final Completion. On the Requested Advance Date for the Final True-Up Advance for a Project (if the related Advance Request Approval Notice has been issued to FFB and no Drawstop Notice has been issued to the Borrower), the Borrower shall be entitled to withdraw any balance then remaining in the Interim True-Up Subaccount for such Project. If Final Completion of both Projects has occurred on or before such date and no Default or Event of Default has occurred and is continuing (and the Borrower so certifies to DOE in writing at the time the applicable Transfer and/or Withdrawal Request is submitted to DOE for review and countersignature), any amounts then on deposit in the Equity Proceeds Subaccount shall be transferred to the Initial Debt Service Account up to the amount required to be deposited therein pursuant to Section 2.13 and any remaining balance in the Equity Proceeds Subaccount may be withdrawn by the Borrower.

(l) Adjustments for Certain Eligible Progress Payment Fundings. The parties acknowledge that the primary intention of Section 2.12(f) is that, at any time when and to the extent there is a sufficient balance in the Dedicated Account, any Eligible Costs that would otherwise be eligible for funding with Advances will instead be 50% funded with Advances at that time, with 50% matched by a withdrawal from the Dedicated Account. To the extent, however, that any Eligible Progress Payment is more than 50% funded from the Dedicated Account solely as a result of such Eligible Progress Payment not meeting the requirements of Section 2.4(d)(ii) for a First Priority Lien prior to the date on which title to the related equipment passes to the Borrower, then on request of the Borrower on the next Requested Advance Date, the amount of the next Advance shall be adjusted (to the extent possible) such that, after giving effect to such Advance, the parties shall have effectively shared in the funding of such Eligible Progress Payment (including any Eligible Progress Payment funded solely from the Dedicated Account) on a 50/50 basis, but solely to the extent that such allocation can be made without allocating DOE's portion to any Eligible Progress Payment not meeting the requirements of Section 2.4(d)(ii) for a First Priority Lien, and subject to all other applicable conditions to borrowing set forth in Article V having been met at that time.

2.13 Initial Debt Service Account.

(a) Establishment of Account. On the Principal Instrument Delivery Date, the Borrower shall establish, and thereafter maintain, with the Collateral Trustee (or an Affiliate thereof designated by the Collateral Trustee for this purpose) a separately identifiable deposit or securities account in the name of the Borrower entitled the "ATVM Tesla Initial Debt Service Account" (the "Initial Debt Service Account"). The Initial Debt Service Account shall be pledged to the Collateral Trustee for the benefit of the Secured Parties pursuant to the Security Agreement and shall be subject to a Blocked

Account Control Agreement. Amounts on deposit in the Initial Debt Service Account may not be withdrawn by the Borrower except as provided in this Section 2.13. Any permitted withdrawals may only be made by delivery to the Collateral Trustee of an appropriately completed request substantially in the form attached to Exhibit P hereto which has been signed by a Responsible Officer of the Borrower and countersigned by DOE (an "Initial Debt Service Withdrawal Request").

(b) Temporary Investments. Pending use as provided in this Section 2.13, the Borrower may cause amounts on deposit in the Initial Debt Service Account to be invested in Limited Cash Equivalents so long as any such investments mature not later than the date on which such funds need to be available in accordance with this Section 2.13. Any interest or dividends earned on such investments shall remain in the Initial Debt Service Account until all amounts referred to in Section 2.13(d) have been paid with respect to both Initial Debt Service Payment Dates, after which the Borrower may withdraw such interest and dividends so long as no Default or Event of Default has occurred and is continuing (and the Borrower so certifies in writing to DOE at the time the applicable Initial Debt Service Withdrawal Request is submitted to DOE for review and countersignature). Neither the Collateral Trustee nor any other Secured Party shall be responsible for any diminution in funds resulting from such investments or any liquidation thereof prior to maturity or shall have any obligation to invest any amounts in the Initial Debt Service Account.

(c) Required Deposit. On or before December 31, 2012, the Borrower shall deposit into the Initial Debt Service Account cash in an aggregate amount (the "Initial Debt Service Requirement") equal to all Note Installments and all accrued interest on the Loans that, in each case, will become due and payable on each of the first two Quarterly Payment Dates that occur after Final Completion of both Projects on which a Note Installment is due (each, an "Initial Debt Service Payment Date"). If the amount to be transferred to the Initial Debt Service Account pursuant to Section 2.12(k) from the Equity Proceeds Subaccount is less than the Initial Debt Service Requirement, or if such transfer does not occur on or before December 31, 2012, the Borrower shall be required to use other sources of cash (excluding any proceeds of the Loans) to fund the Initial Debt Service Requirement in full on or before December 31, 2012.

(d) Application of Proceeds. No less than five (5) and no more than ten (10) Business Days prior to each Initial Debt Service Payment Date, the Borrower shall deliver, by an Acceptable Delivery Method, to DOE a completed Initial Debt Service Withdrawal Request (subject to DOE countersignature) instructing the Collateral Trustee to withdraw funds from the Initial Debt Service Account (to the extent of the funds available therein) in amounts sufficient to pay the Note Installments and accrued interest due and payable on such Initial Debt Service Payment Date (which amounts shall be specified in such Initial Debt Service Withdrawal Request) and to remit such funds directly to FFB on such Initial Debt Service Payment Date. Promptly upon receipt and confirmation by DOE that such Initial Debt Service Withdrawal Request has been properly completed, DOE shall countersign it and submit it to the Collateral Trustee.

ARTICLE III
PAYMENTS; PREPAYMENTS

3.1 Place and Manner of Payments.

(a) All payments due under any Note shall be made by the Borrower to FFB pursuant to the terms of the Funding Agreements.

(b) All payments to be made to DOE under this Agreement shall be made to DOE in lawful currency of the United States of America in immediately available funds before 1:00 p.m. (District of Columbia time) on the date when due to such account as DOE shall direct by written notice to the Borrower not less than five (5) Business Days prior to the date when due.

(c) In the event that the date of any payment to DOE or the expiration of any time period hereunder occurs on a day which is not a Business Day, then such payment or expiration of time period shall be made or occur on the next succeeding Business Day and such extension of time shall in such cases be included in computing interest or fees, if any, in connection with such payment.

3.2 Payment of the Facility Fee. The Borrower shall pay to DOE, on the Principal Instrument Delivery Date, a Facility Fee in the aggregate amount of $465,047. Once paid, the Facility Fee shall not be refundable under any circumstances.

3.3 Maturity and Amortization.

(a) Maturity Dates. The Borrower shall repay (i) all outstanding Project P Loans on the Note P Stated Maturity Date and (ii) all outstanding Project S Loans on the Note S Stated Maturity Date.

(b) Quarterly Payments.

(i) Note P shall (A) be stated to mature on the Note P Stated Maturity Date and provide that each Advance under Note P amortizes in twenty-eight (28) (or, in the case of any Advance made after December 15, 2012, twenty-six (26)) equal consecutive quarterly installments of principal (each, a "Note P Installment") payable on each Quarterly Payment Date, commencing on December 15, 2012 (or, in the case of any Advance made after December 15, 2012, commencing on June 15, 2013), and (B) provide for the payment of interest in accordance with Section 3.5 and the Funding Agreements.

(ii) Note S shall (A) be stated to mature on the Note S Stated Maturity Date and provide that each Advance under Note S amortizes in forty (40) (or, in the case of any Advance made after December 15, 2012, thirty-eight (38)) equal consecutive quarterly installments of principal (each, a "Note S Installment") payable on each Quarterly Payment Date, commencing on December 15, 2012 (or, in the case of any Advance made after December 15,

2012, commencing on June 15, 2013), and (B) provide for the payment of interest in accordance with Section 3.5 and the Funding Agreements.

3.4 Evidence of Debt.

(a) Records. DOE shall maintain, or cause to be maintained, in accordance with its usual practice, internal records evidencing the amounts from time to time (i) advanced by FFB under the Note Purchase Agreement and the Notes, (ii) paid by DOE to FFB pursuant to Section 6.3 of the Program Financing Agreement and (iii) paid by or on behalf of the Borrower from time to time in respect thereof.

(b) Prima Facie Evidence. Except as otherwise provided in any Loan Document, the entries made in the internal records maintained by or on behalf of DOE pursuant to paragraph (a) above shall constitute *prima facie* evidence of the existence and amount of the Note P Obligations or the Note S Obligations of the Borrower as therein recorded.

3.5 Interest Provisions Relating to All Advances.

(a) Interest Account and Interest Computations. Interest shall accrue on the unpaid principal amount of each Advance from the date such Advance is disbursed to the Borrower or otherwise disbursed or deemed disbursed pursuant to the Note Purchase Agreement and the relevant Note, to the date such Advance is due, at a rate per annum as specified in the Funding Agreements. All overdue amounts in respect of any Advance will (x) accrue interest at the Late Charge Rate and (y) be payable by the Borrower in accordance with the Funding Agreements. The Borrower hereby authorizes FFB to record in an account or accounts maintained by FFB on its books (i) the interest rates applicable to all Advances, (ii) the date and amount of each principal and interest payment on each Advance outstanding, and (iii) such other information as FFB may determine is necessary for the computation of interest payable by the Borrower under the relevant Note. The Borrower agrees that all computations of interest by FFB pursuant to this Section 3.5 shall, in the absence of manifest error, be *prima facie* evidence of the amount thereof. All computations of interest shall be made as set forth in the relevant Funding Agreement.

(b) Interest Payment Dates. Subject to the terms of the Note Purchase Agreement and the relevant Note, the Borrower shall pay accrued interest on the outstanding principal amount of each Advance on each Quarterly Payment Date, on each prepayment (to the extent thereof), and at maturity (whether by acceleration or otherwise).

3.6 Prepayments.

(a) Terms of All Prepayments.

(i) With respect to any prepayment of any Advance, whether such prepayment is voluntary or mandatory, including a prepayment upon

acceleration, the Borrower shall comply with all applicable terms and provisions of this Agreement and the Funding Agreements.

(ii) All prepayments of any Note shall be (A) applied to Advances as specified in the relevant Prepayment Election Notice (subject to Sections 3.6(b) and 3.6(c)(vii) to the extent applicable) and (B) due in an amount equal to the Prepayment Price calculated by FFB in accordance with the terms of the respective Note; *provided* that, in the event FFB fails to deliver a notice of the applicable Prepayment Price in accordance with the terms of the applicable Note by 12:00 PM (New York City time) on the Business Day immediately preceding the applicable Intended Prepayment Date, the Borrower shall on such Business Day use commercially reasonable efforts to contact FFB to determine the applicable Prepayment Price, or, if Borrower is unable to determine such Prepayment Price with FFB, then Borrower shall either (x) (1) in good faith calculate the applicable Prepayment Price due in connection with such prepayment and (2) make a payment on such prepayment date to FFB in an amount equal to the amount so calculated or (y) in the case of any Mandatory Prepayment, make a payment on such prepayment date to FFB in an amount equal to the applicable Net Cash Proceeds, Reinvestment Prepayment Amount, Excess Advance Amount, Excess Project Loan Amount or Excess Loan Amount, as the case may be, together, in each case, with accrued and unpaid interest on such amount; *provided further* that, if the actual applicable Prepayment Price under the applicable Note calculated by FFB (1) is greater than the amount paid by the Borrower, the Borrower shall promptly, but in no event later than two Business Day following delivery by FFB to the Borrower of notice of the amount of such applicable Prepayment Price, make a payment to FFB in an amount equal to the difference between such Prepayment Price and the amount actually paid by the Borrower, it being understood that if the Borrower shall fail to pay any portion of such amount in accordance with the foregoing, the Borrower shall pay FFB a Late Charge on any such unpaid amount from such aforementioned prepayment date to the date on which payment is made, computed in accordance with the provisions of the relevant Note, or (2) is less than the amount paid by the Borrower, the amount equal to the difference between the applicable Prepayment Price and the amount paid by the Borrower shall be (a) credited to the payment due by the Borrower to FFB on the Quarterly Payment Date immediately following the date of such payment by the Borrower or (b) following any prepayment by the Borrower pursuant to which the full amount of all of the Advances outstanding under each Loan has been paid, returned by FFB or its designee to the Borrower within two (2) Business Days following the date on which FFB shall have delivered to Borrower notice of the amount of the actual Prepayment Price under each applicable Note.

(iii) The Borrower may not reborrow the principal amount of any Advance that is prepaid, nor shall any such prepayment create availability for further borrowings during the Availability Period.

(iv) If the Borrower shall fail to make a prepayment to FFB on any Intended Prepayment Date in accordance with this Section 3.6 with respect to any notice of prepayment delivered to DOE and FFB, the Borrower shall pay to FFB a Late Charge on any unpaid amount from the Intended Prepayment Date to the date on which payment is made, computed in accordance with the provisions of the relevant Note.

(b) Voluntary Prepayments.

(i) The Borrower may at any time and from time to time prepay all or any portion of the outstanding principal amount of any Advance under any Note, or prepay such Note in its entirety, upon prior submission of a Prepayment Election Notice by the Borrower to DOE and FFB not less than five (5) Business Days prior to the Intended Prepayment Date in accordance with the terms hereof and the relevant Note. Voluntary prepayments of any Advance shall be subject to a minimum amount equal to $100,000 of principal or, if less, the total principal amount of such Advance then outstanding; provided that the aggregate amount of Advances being prepaid on the same date that are part of the same Loan shall also be subject to the minimums set forth in clause (ii) below. Voluntary prepayments of any Advance shall be applied to principal installments of such Advance in the inverse order of maturity in accordance with the terms of the relevant Note.

(ii) Voluntary prepayments made under this Section 3.6(b) shall be subject to a minimum principal amount equal to (A) with respect to the Project P Loan, an aggregate of $1,000,000 and integral multiples of $100,000 in excess of that amount and (B) with respect to the Project S Loan, an aggregate of $1,000,000 and integral multiples of $100,000 in excess of that amount or, in each case, if less, the total principal amount of such Loan then outstanding.

(c) Mandatory Prepayments.

(i) Net Cash Proceeds from Specified Dispositions or Recovery Events. Within ten (10) Business Days of the date on which the Borrower or any Subsidiary shall receive Net Cash Proceeds from any permitted Specified Disposition or from any Recovery Event, then, unless a Reinvestment Notice (which, in the case of any Recovery Event, is permitted under Section 7.5, if applicable) shall be delivered in respect thereof, the Borrower shall deliver to DOE and FFB a Prepayment Election Notice on such date specifying that it elects to prepay the Advances under the Notes in a principal amount equal to such Net Cash Proceeds in accordance with Section 3.6(c)(vi) and shall make such prepayment within five (5) Business Days after the delivery of such Prepayment Election Notice; *provided* that, following any Reinvestment Prepayment Date arising from a Specified Disposition or Recovery Event, the Reinvestment Prepayment Amount, if any, related to such Specified Disposition or Recovery Event shall be required to be prepaid, and the Borrower shall on such date deliver to DOE and FFB a Prepayment Election Notice specifying that it elects to prepay

the Advances under the Notes in a principal amount equal to such Reinvestment Prepayment Amount in accordance with Section 3.6(c)(vi) and shall make such prepayment within five (5) Business Days after the delivery of such Prepayment Election Notice; and *provided further* that, notwithstanding anything to the contrary herein, the Borrower shall not be required to make any prepayment under this Section 3.6(c)(i) to the extent of any Net Cash Proceeds from any permitted Specified Disposition or Recovery Event until the aggregate cumulative amount of Net Cash Proceeds from any Specified Dispositions and/or Recovery Events that have not been reinvested in accordance with this Section 3.6(c)(i) and have not been previously applied by the Borrower to prepay Advances in accordance with this Section 3.6(c)(i) is equal to or greater than $5,000,000.

(ii) Excess Advances. If on any Quarterly Reporting Date there is an Excess Advance Amount, the Borrower shall, within five (5) Business Days following the request therefor by DOE in its sole discretion, deliver to DOE and FFB a Prepayment Election Notice specifying it elects to prepay the Advances under the Notes in a principal amount equal to such Excess Advance Amount in accordance with Section 3.6(c)(vi) and shall make such prepayment within five (5) Business Days after the delivery of such Prepayment Election Notice; *provided* that if no request is made by DOE prior to the making of an Advance by FFB on the next succeeding Advance Date, such repayment amount shall be deducted by the Borrower from future Advances under the Funding Agreements pursuant to Section 5.6.

(iii) Excess Project Loan Amount. If, on any date, the aggregate outstanding principal amount of all Advances corresponding to any Project exceeds the Project Maximum Loan Amount for such Project (such excess amount, the "Excess Project Loan Amount"), the Borrower shall, within five (5) Business Days, deliver to DOE and FFB a Prepayment Election Notice specifying that it elects to prepay the Advances under the Notes in a principal amount equal to such Excess Project Loan Amount in accordance with Section 3.6(c)(vi) and shall make such prepayment within five (5) Business Days after the delivery of such Prepayment Election Notice.

(iv) Excess Loan Amount. If, on any date, the aggregate outstanding principal amount of all Advances under each of the Notes exceeds the Maximum Total Loan Amount (such excess amount, the "Excess Loan Amount"), the Borrower shall, within five (5) Business Days, deliver to DOE and FFB a Prepayment Election Notice specifying that it elects to prepay the Advances under the Notes in a principal amount equal to such Excess Loan Amount in accordance with Section 3.6(c)(vi) and shall make such prepayment within five (5) Business Days after the delivery of such Prepayment Election Notice.

(v) Delivery of a Prepayment Election Notice to DOE. Any Prepayment Election Notice required to be delivered pursuant to this Section 3.6(c) shall be delivered by an Authorized Transmitter of the Borrower and by Acceptable Delivery Method to DOE and FFB on the dates and/or within the time

frames provided in this Section 3.6(c), and shall include all information required pursuant to the applicable Funding Agreements.

(vi) Timing of Mandatory Prepayments. Any Mandatory Prepayments of Advances made under the Notes shall be made on the Intended Prepayment Date set forth in the relevant Prepayment Election Notice delivered pursuant to Section 3.6(c)(v), which Intended Prepayment Dates shall occur within the applicable time frames provided in this Section 3.6(c).

(vii) Application of Mandatory Prepayments. Any mandatory prepayment of any Advance pursuant to Section 3.6(c) shall be applied as follows:

(A) In the case of mandatory prepayments made pursuant to Section 3.6(c)(i), such prepayments shall be applied in the following order (regardless of whether the event giving rise to such prepayments relates to Project P or Project S):

(1) *first*, to the remaining scheduled Note S Installments, in inverse order of maturity, under any of the outstanding Project S Advances selected by DOE in its sole discretion until the Project S Advances are paid in full, in accordance with the terms of Note S; and

(2) *second*, to the remaining scheduled Note P Installments, in inverse order of maturity, under any of the outstanding Project P Advances selected by DOE in its sole discretion until the Project P Advances are paid in full, in accordance with the terms of Note P.

(B) In the case of mandatory prepayments made pursuant to Sections 3.6(c)(ii), 3.6(c)(iii) or 3.6(c)(iv), such prepayments shall be applied to the remaining scheduled Note Installments, in the inverse order of maturity, under any of the outstanding Advances selected by DOE in its sole discretion, in accordance with the terms of the applicable Note.

ARTICLE IV

REIMBURSEMENT OBLIGATIONS

4.1 Reimbursement and Other Payment Obligations.

(a) The Borrower agrees to pay to DOE or to such other Person as DOE shall direct as follows:

(i) a sum, in U.S. Dollars, equal to the total of all amounts payable by DOE to FFB pursuant to Section 6.3.1 of the Program Financing

Agreement which relate to, or arise out of, FFB providing or having provided financing under the Notes (such amounts, "Reimbursement Amounts");

(ii) to the extent permitted by applicable Requirements of Law, any and all charges, fees, reasonable and documented costs and expenses which DOE may pay or incur, including attorneys', accountants' and other consultants' fees and expenses, and any and all recording and filing fees that may be payable or determined to be payable, in connection with (i) the enforcement, defense or preservation of any rights in respect of any of the Loan Documents during the continuance of a Default or Event of Default, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of any party to any Loan Document or any Subsidiary thereof) relating to any of the Loan Documents or the transactions contemplated thereby, (ii) the foreclosure against, sale or other disposition of collateral, if any, securing any obligations under any of the Loan Documents, or pursuit of any other remedies under any of the Loan Documents, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, (iii) any review or approval by DOE in connection with the delivery of collateral or substitute collateral, if any, under any of the Loan Documents, or (iv) any amendment, supplement or modification of any Loan Document, or any waiver or consent under any Loan Document; and

(iii) to the extent permitted by applicable Requirements of Law, interest on any and all amounts described in this Article IV from the date payable by DOE under the Program Financing Agreement until payment thereof in full by the Borrower and interest on any and all amounts described in Section 3.2 from the date due until payment thereof in full by the Borrower, in each case, payable to DOE at the Late Charge Rate for the period commencing on the date such payment is due and ending on the date payment is made by the Borrower.

(b) All amounts payable under this Section 4.1 shall be payable within five (5) Business Days after a demand therefor, in U.S. Dollars, in full, without any requirement on the part of DOE to seek reimbursement from any other sources of indemnity therefor.

4.2 Subrogation. In furtherance of and not in limitation of DOE's right of subrogation, the Borrower acknowledges that, to the extent of any payment made by DOE of Reimbursement Amounts, DOE shall be fully subrogated to the extent of any such payment, and any additional interest due on any late payment, to the rights of FFB under the Notes, the Note Purchase Agreement and any other Loan Documents. The Borrower agrees to such subrogation and agrees to execute such instruments and to take such actions as DOE may reasonably request to evidence such subrogation and to perfect the right of DOE to receive any amounts paid or payable thereunder. If and to the extent that DOE shall be fully and indefeasibly reimbursed in cash or immediately available funds by the Borrower pursuant to Section 4.1 in respect of any payment made by DOE of Reimbursement Amounts, such reimbursement shall be deemed to constitute an equal and corresponding payment in respect of DOE's rights of subrogation hereunder in respect of such payment of Reimbursement Amounts.

4.3 Obligations Absolute.

(a) The obligations of the Borrower under this Article IV shall be absolute and unconditional, and shall be paid or performed strictly in accordance with this Agreement under all circumstances irrespective of:

(i) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to the Notes, this Agreement or any other Loan Document;

(ii) any exchange or release of any other obligations hereunder;

(iii) the existence of any claim, setoff, defense, reduction, abatement or other right which the Borrower may have at any time against DOE or any other Person;

(iv) any document presented in connection with any Loan Document proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) any payment by DOE pursuant to the terms of the Program Financing Agreement against presentation of a certificate or other document which does not strictly comply with terms of such Program Financing Agreement;

(vi) any breach by the Borrower of any representation, warranty or covenant contained in any of the Loan Documents;

(vii) except to the extent prohibited by mandatory provisions of applicable Requirements of Law, status as, and any other rights of, a "debtor" under the UCC as in effect from time to time in the State of New York or under the applicable Requirements of Law of any other relevant jurisdiction;

(viii) any duty on the part of DOE to disclose any matter, fact or thing relating to the business, operations or financial or other condition of the Borrower now known or hereafter known by DOE;

(ix) any disability or other defense of the Borrower or any other Person;

(x) any act or omission by DOE that directly or indirectly results in or aids the discharge of the Borrower or any other Person, by operation of law or otherwise;

(xi) any change in the time, manner or place of payment of, or in any other term of, all or any of its obligations or liabilities hereunder or any compromise, renewal, extension, acceleration or release with respect thereto, any change in the collateral subject to its obligations or liabilities hereunder or any

amendment or waiver of or any consent to departure from any other guarantee for all or any of its obligations or liabilities hereunder;

(xii) any change in the corporate structure or existence of the Borrower or any Subsidiary or release of any Guarantor;

(xiii) any exchange, taking, or release of Collateral;

(xiv) any application of Collateral to the Secured Obligations; or

(xv) any other circumstances or conditions, foreseen or unforeseen, now existing or hereafter occurring, which might otherwise constitute a defense available to, or discharge of, the Borrower in respect of any Loan Document (other than a defense of payment or performance).

(b) The Borrower and any and all others who may become liable for all or part of the obligations of the Borrower under this Agreement agree to be bound by this Article IV and, to the extent permitted by Requirements of Law:

(i) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisement privileges against the indebtedness and obligations evidenced by any Loan Documents or by any extension or renewal thereof;

(ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor and notice of protest, except as expressly provided otherwise in this Agreement;

(iii) waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of any payment hereunder except as required hereby or by the other Loan Documents;

(iv) waive all rights of abatement, diminution, postponement or deduction, and any defense (other than a defense of payment or performance), that any party to any Loan Document or any beneficiary thereof may have at any time against DOE or any other Person, or out of any obligation at any time owing to DOE or FFB;

(v) agree that its liabilities hereunder shall be unconditional and without regard to any setoff, counterclaim or the liability of any other Person for the payment hereof;

(vi) agree that any consent, waiver or forbearance hereunder with respect to an event shall operate only for such event and not for any subsequent event;

(vii) consent to any and all extensions of time that may be granted by DOE or FFB with respect to any payment hereunder or other provisions hereof and to the release of any security at any time given for any payment hereunder, or any part thereof, with or without substitution, and to the release of any Person or entity liable for any such payment;

(viii) waive all defenses and allegations based on or arising out of any contradiction or incompatibility among its obligations or liabilities hereunder and any of its other obligations;

(ix) waive, unless and until its obligations or liabilities hereunder have been performed, paid, satisfied or discharged in full, any right to enforce any remedy that DOE or FFB now has or may in the future have against the Borrower or any other Person;

(x) waive any benefit of, or any right to participate in, any guarantee or insurance whatsoever now or in the future held by DOE or FFB;

(xi) waive the benefit of any statute of limitations affecting its liability hereunder; and

(xii) consent to the addition of any and all other makers, endorsers, guarantors and other obligors for any payment hereunder, and to the acceptance of any and all other security for any payment hereunder, and agree that the addition of any such obligors or security shall not affect the liability of the parties hereto for any payment hereunder.

(c) The Borrower shall remain liable for its reimbursement and other payment obligations under this Agreement and the other Loan Documents until such obligations have been irrevocably paid or otherwise satisfied and discharged in full in accordance with this Agreement and the other Loan Documents, and nothing except irrevocable payment, satisfaction or discharge in full thereof in accordance with this Agreement and the other Loan Documents shall release the Borrower from such obligations.

(d) Except as expressly provided herein, the obligations and liabilities of the Borrower under this Agreement or the other Loan Documents shall not be conditioned or contingent upon the pursuit or exercise by DOE, FFB or any other Person at any time of any right or remedy (nor shall such obligations and liabilities be affected, released or modified by any action, failure, delay or omission by DOE, FFB or any other Person in the enforcement or exercise of any right or remedy under applicable Requirements of Law) against any Person that may be or become liable in respect of all or any part of the obligations and liabilities of the Borrower under this Agreement or the other Loan Documents.

4.4 Evidence of Payment. In the event of any payment by DOE that is required to be reimbursed or indemnified by the Borrower, the Borrower agrees to accept evidence of payment by DOE as *prima facie* evidence of the amount thereof.

4.5 Payment of Loan Document Amounts.

(a) Anything in this Article IV to the contrary notwithstanding, including Section 4.4, (i) amounts payable by the Borrower pursuant to Section 4.1 in respect of payments made or required to be made by DOE to FFB on account of Loan Document Amounts shall be payable by the Borrower only to the extent (including subject to any conditions provided for in the Loan Documents and any defenses of the Borrower under the Loan Documents), at the times, in the manner and in the amounts that such Loan Document Amounts would otherwise have been payable by the Borrower under the Loan Documents (including, for the avoidance of doubt, on an accelerated basis following the occurrence of an Event of Default), (ii) amounts payable by the Borrower under Section 4.1 shall be without duplication of any amounts payable by the Borrower pursuant to (v) this Agreement, (w) the Notes, (x) the Note Purchase Agreement, (y) the subrogation rights referred to in Section 4.2 or (z) the provisions of Section 12.8 and (iii) no amount shall be payable by the Borrower under Section 4.1 in respect of payments made or required to be made by DOE to FFB in respect of any liability, loss, cost or expense relating to or arising out of any sale, assignment or other transfer of any Note or portion thereof by FFB to DOE, except during the continuance of an Event of Default.

(b) If an event permitting the acceleration of any Advance and/or any Note shall at any time have occurred and be continuing, and such acceleration of any Advance and/or any Note shall at such time be prevented by reason of the pendency against the Borrower or any other Person of a case or proceeding under a bankruptcy or insolvency law, the Borrower agrees that, for purposes of this Agreement and its obligations hereunder, in respect of any payment made by DOE to FFB, such Advance and/or such Note shall be deemed to have been accelerated with the same effect as if such Advance and/or such Note had been accelerated in accordance with the terms of the Funding Agreements.

ARTICLE V

CONDITIONS PRECEDENT

5.1 Conditions Precedent to the Principal Instrument Delivery Date. The obligation of DOE to deliver to FFB the Principal Instruments in accordance with Section 4.2 of the Note Purchase Agreement required for FFB, on the Financial Closing Date, to purchase the Notes is subject to the prior satisfaction (or waiver in writing), as determined by (x) in all cases, DOE, in its sole discretion, and (y) with respect to any documents or instruments addressed to FFB or to which FFB is party, FFB, in its sole discretion, of each of the following conditions precedent as of the Principal Instrument Delivery Date and to their continued satisfaction on the Financial Closing Date (but in no event later than January 31, 2010):

(a) Loan Documents. DOE shall have received fully executed originals in sufficient counterparts for each of DOE, FFB and the Collateral Trustee, in each case that is party thereto, of each of the following documents, each of which shall be in form and substance satisfactory to DOE, in its sole discretion, and such other party or parties thereto, and shall be in full force and effect:

(i) Arrangement Agreement. This Agreement.

(ii) Funding Agreements. Each of the following documents (the "Funding Agreements"):

(A) the Program Financing Agreement;

(B) the Note Purchase Agreement;

(C) Note P; and

(D) Note S.

(iii) Guarantor Documents. Each of the following documents if as of the Principal Instrument Delivery Date or the Financial Closing Date, as applicable, the Borrower has any Domestic Subsidiaries or DOE determines to require any Foreign Subsidiary to become a Guarantor as of such date pursuant to Section 7.6(b):

(A) the Guarantee; and

(B) the Subordination Agreement.

(iv) Security Documents. Each of the following documents:

(A) the Collateral Trust Agreement;

(B) the Security Agreement;

(C) the Collateral Schedules;

(D) the Copyright Security Agreements (if as of the Principal Instrument Delivery Date or the Financial Closing Date, as applicable, any Obligor has any registered copyrights or filed copyright applications);

(E) the Patent Security Agreements;

(F) the Trademark Security Agreements;

(G) UCC-1 financing statements for each Obligor;

(H) Blocked Account Control Agreements for each of the Dedicated Account and the Initial Debt Service Account;

(I) Control Agreements for each other deposit account and securities account owned by any Obligor (other than Excluded Accounts); and

(J) the Deer Creek Collateral Access Agreement and Collateral Access Agreements for each other leased or third party location referred to in Section 7.6(d).

(v) Warrant Documents. Each of the following documents:

(A) the Warrants; and

(B) the Registration Rights Agreement.

(b) Borrower FFB Documents. DOE shall have received each of the documents, including the Borrower Instruments, the Certificate Specifying Authorized Borrower Officials and the Opinion of Borrower's Counsel re: Borrower Instruments required to be delivered by the Borrower pursuant to Section 3.2 of the Note Purchase Agreement.

(c) Solvency Certificate. DOE shall have received a fully executed original solvency certificate, substantially in the form of Exhibit O hereto, from the chief financial officer of the Borrower.

(d) Obligor Certificates; Charter Amendment. DOE shall have received a fully executed original certificate of each Obligor, dated the Principal Instrument Delivery Date, with appropriate insertions and attachments, including (i) the Organizational Documents of such Obligor certified by the relevant authority of the jurisdiction of organization of such Obligor, (ii) a long form good standing certificate for such Obligor from its jurisdiction of organization and a good standing certificate from each jurisdiction where it is required to be qualified to do business, (iii) evidence of each Obligor's receipt of all board, stockholder and other corporate approvals to enter into the Transaction Documents to which it is a party and fully implement and perform the terms thereof (including, with respect to the certificate to be delivered by the Borrower, approvals related to the Charter Amendment and the Projects); and (iv) with respect to the certificate to be delivered by the Borrower, evidence that the Charter Amendment has been duly executed, delivered and filed with the Secretary of State of the State of Delaware.

(e) Information Certificate. DOE shall have received, in form and substance satisfactory to it a fully executed original updated Information Certificate substantially in the form of the original version thereof executed and delivered on June 23, 2009, together with (i) a comparison showing all changes therefrom (it being understood that if there are any changes in the information set forth therein from that set forth in such original version, this condition shall not be satisfied unless DOE is satisfied

with such changes in its sole discretion) and (ii) a certification that such Information Certificate was delivered to DOE for review at least five (5) Business Days prior to the Principal Instrument Delivery Date (or within such shorter period as DOE may have agreed to).

(f) Information; Eligibility. DOE shall have received certification by a Responsible Officer of the Borrower (in the form set forth in the Form of Borrower Certificate (for Closing) attached hereto as Exhibit S-1), dated the Principal Instrument Delivery Date, that:

(i) the information contained in the Application, together with all other information delivered by or on behalf of the Borrower or any Subsidiary in connection with such Application and the negotiation of the Transaction Documents, including the Information Certificate and the Collateral Schedules, is true and complete in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements were made (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified); and

(ii) no event has occurred that has caused (x) the Borrower to cease to be an Eligible Applicant, as defined in the Applicable Regulations, or (y) any Project to cease to be an Eligible Project, as defined in the Applicable Regulations.

(g) Perfection. DOE shall have received evidence, satisfactory to DOE, of the perfection and First Priority status of all security interests in the Collateral created by the Security Documents to the extent required therein (including by means of (i) registrations with respect to Certificate-of-Title Equipment (as defined in the Security Agreement) to the extent that the aggregate value thereof exceeds $2,500,000 and (ii) fixture filings with respect to any Site owned or leased by the Borrower or any of its Subsidiaries as of the Principal Instrument Delivery Date), or at DOE's sole election arrangements satisfactory to DOE in its sole discretion to obtain such perfection on or prior to the date of the first Advance, and all necessary waivers, amendments, approvals and consents authorizing such security interests.

(h) Lien Searches. DOE shall have received the results of recent lien searches, satisfactory to DOE in its sole discretion, in the State of Delaware, the U.S. Patent and Trademark Office, U.S. Copyright Office and each other domestic or foreign jurisdiction in which UCC financing statements and intellectual property assignments or grants of Liens are required to be filed hereunder, together with copies of any financing statements disclosed by such searches and such searches shall disclose no Liens on any assets encumbered by any Security Document, except for Permitted Liens.

(i) Evidence of no Judgment Liens. DOE shall have received certification by a Responsible Officer of the Borrower (in the form set forth in the Form

of Borrower Certificate (for Closing) attached hereto as Exhibit S-1) certifying that (i) neither the Borrower nor any of its Subsidiaries has a judgment lien against any of their respective properties for a debt owed to the United States of America and (ii) neither the Borrower nor any of its Subsidiaries has an outstanding debt (other than a debt under the Code) owed to the United States of America or any agency thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R.§ 285.13(d).

(j) Existing Debt. DOE shall have received evidence, satisfactory to DOE, that (x) no Indebtedness of the Borrower or any Subsidiary is outstanding other than Indebtedness permitted under clauses (b) and (e) of Section 9.2 and other Indebtedness permitted by Section 9.2 to the extent described on Schedule D-4 to the Information Certificate, (y) the existing agreements in favor of City National Bank have been amended to limit the Liens created by such agreements to the equipment and restricted deposits identified on Schedule D-5 to the Information Certificate and (z) Wells Fargo Bank, National Association shall have consented to the Collateral Trustee's Lien on the Borrower's previously unencumbered and unrestricted liquid assets.

(k) Legal Opinions. The Lender Parties shall have received executed originals of the following legal opinions, each dated as of the Principal Instrument Delivery Date:

(i) the legal opinion of Wilson Sonsini Goodrich & Rosati, PC, counsel to the Borrower and its Subsidiaries, in the form approved by DOE on or prior to the date hereof; and

(ii) if and to the extent requested by DOE, legal opinions of local counsel with respect to such other special matters and local jurisdictions as DOE may have reasonably requested prior to the Principal Instrument Delivery Date.

Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement and the Funding Agreements as DOE or FFB may reasonably require.

(l) Historical Financial Statements; Pro Forma Covenant Compliance. DOE shall have received the following items on the Principal Instrument Delivery Date:

(i) copies of the Historical Financial Statements certified by a Responsible Officer of the Borrower (in the form set forth in the Form of Borrower Certificate (for Financial Documents Delivered at Closing) attached hereto as Exhibit S-2) (x) that they fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in accordance with GAAP applied on a basis consistent with prior years, subject, in the case of unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments, and (y) that such Historical Financial Statements were delivered to DOE for review at least five (5) Business Days prior to the Principal

Instrument Delivery Date (or within such shorter period as DOE may have agreed to); and

(ii) a fully executed original certificate of a Responsible Officer of the Borrower (in the form set forth in the Form of Borrower Certificate (for Financial Documents Delivered at Closing) attached hereto as Exhibit S-2) (x) setting forth computations in reasonable detail satisfactory to DOE demonstrating that, based on the Historical Financial Statements, the Borrower would have been in compliance with the covenants set forth in subsection (c) of Annex 9.1 on the Principal Instrument Delivery Date, as calculated (A) with respect to the Current Ratio, as of the last day of the last fiscal quarter included in the Historical Financial Statements and (B) with respect to the Cash Balance, on a *pro forma* basis as of the last day of the last calendar month included in the Historical Financial Statements, after giving effect to the expected initial Advance under the Notes as if it had been made one (1) Business Day prior to the first day of such month; *provided that,* solely for the purposes of the certification and calculations required by this Section 5.1(l)(ii), the covenants set forth in such subsection (c) of Annex 9.1 shall be deemed to apply to the periods described in (A) and (B) above; and (y) certifying that such computations were delivered to DOE for review at least five (5) Business Days prior to the Principal Instrument Delivery Date (or within such shorter period as DOE may have agreed to).

(m) Business Plan. DOE shall have received on the Principal Instrument Delivery Date a business plan containing the following, as may be acceptable to DOE in its sole discretion (unless set forth otherwise below), which plan shall be accompanied by a fully executed original certificate of a Responsible Officer of the Borrower (in the form set forth in the Form of Borrower Certificate (for Financial Documents Delivered at Closing) attached hereto as Exhibit S-2) certifying (x) that such business plan is based on good faith estimates and assumptions made by management of the Borrower, (y) that management of the Borrower believes that such business plan is reasonable and attainable and (z) that such business plan was delivered to DOE for review at least five (5) Business Days prior to the Principal Instrument Delivery Date (or within such shorter period as DOE may have agreed to):

(i) a reasonably detailed list of construction, production, manufacturing and other milestones (collectively, the "Milestones"), in chronological order, that the Borrower will need to satisfy in order to fully complete the Projects, together with the anticipated completion dates (each, a "Milestone Completion Date") for each of the Milestones (including, without limitation, a committed outside date for substantial completion of each Project), and to the extent they can be identified as of the date such business plan is delivered, the anticipated costs and expenses that the Borrower expects will be incurred in connection with, and upon the completion of, each of the Milestones; *provided*, that no Milestone or Milestone Completion Date may be updated or amended without the written consent of DOE, in its sole discretion;

(ii) a financial model presenting *pro forma* financial statements for the Borrower (and its Subsidiaries) for the proposed term of the Loans, including without limitation, income statements, balance sheets and cash flow statements;

(iii) detailed descriptions of the overall financing plan for each Project and all other cash needs of the Borrower for the proposed term of the Loans, including all sources and uses of funding, a detailed schedule of proposed Advances for each fiscal quarter and the Eligible Project Costs to be paid or reimbursed with such proceeds;

(iv) a budget for each Project (the "Project P Budget" or "Project S Budget", as applicable, and, collectively, the "Project Budgets"), including a detailed estimate and breakdown of the Total Project Costs of such Project;

(v) a detailed description of the Borrower's structure and personnel for senior management and board of directors of the Borrower; and

(vi) such other information as may be required by DOE in its reasonable discretion (items (i) through (vi), as updated from time to time in accordance with Section 8.2(b) and together with the Project Forecasts and Financial Statements delivered pursuant to Sections 2.3(b), 5.1(l), 8.1 and 8.2(b), as applicable, being referred to herein collectively as the "Business Plan").

(n) Eligible Project Costs. DOE shall have received, in form and substance satisfactory to DOE, information with respect to Eligible Project Costs incurred by any Obligor as of the most recently ended fiscal quarter, including such breakdowns or other information as DOE may request, all certified as of the Principal Instrument Delivery Date by a Responsible Officer of the Borrower (in the form set forth in the Form of Borrower Certificate (for Financial Documents Delivered at Closing) attached hereto as Exhibit S-2) as being true and complete in all material respects (it being understood that the first Advance Request shall include similar information with respect to Eligible Project Costs incurred by any Obligor as of such fiscal quarter together with a certification by a Responsible Officer of the Borrower that such information is true and complete in all respects).

(o) Consents. DOE shall have received, in form and substance satisfactory to DOE, (i) evidence that all Governmental Approvals and other consents, approvals and waivers listed on Schedule 6.6 to the Information Certificate that are required to be obtained on or prior to the Principal Instrument Delivery Date, each in form and substance satisfactory to DOE, shall have been duly obtained, (ii) a copy thereof certified as of the Principal Instrument Delivery Date by a Responsible Officer of the Borrower as being true and complete and (iii) certification by a Responsible Officer of the Borrower (in the form set forth in the form of Borrower Certificate (for Closing) attached hereto as Exhibit S-1) stating that such consents, approvals and waivers are in full force and effect and that all applicable waiting periods have expired without any

action being taken or threatened which would restrain, prevent or otherwise impose adverse conditions on the Borrower.

(p) Insurance. DOE shall have received, in form and substance satisfactory to it, a report and associated fully executed closing certificate from the Borrower's insurance advisor, confirming (i) the insurance carried by the Borrower in compliance with Section 7.4, and (ii) that the endorsements required by Section 7.4 have been obtained.

(q) Intellectual Property. DOE shall have received, in form and substance satisfactory to it, evidence that the Borrower and its Subsidiaries own or have the right to use all Intellectual Property necessary for the Projects.

(r) Exchange Risk. DOE shall have received, in form and substance satisfactory to it, evidence that the Borrower has a commercially reasonable strategy with respect to foreign exchange.

(s) Availability of Funds. DOE shall have received, in form and substance satisfactory to it, evidence certified as of the Principal Instrument Delivery Date by a Responsible Officer of the Borrower, that (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S, and (iii) the Cash Equity Condition shall be satisfied.

(t) Payment of the Facility Fee. DOE shall have received, in form and substance satisfactory to it, confirmation that the Facility Fee due and payable on the Principal Instrument Delivery Date has been paid in full.

(u) Lobbying Certification. DOE shall have received, in form and substance satisfactory to it, the certification to be filed by recipients of federal loans regarding lobbying, in the form set forth in Appendix A to 31 C.F.R. Part 21, attached hereto as Exhibit Q, and, if required under 31 C.F.R. Part 21, disclosure forms to report lobbying, in the form set forth in Appendix B to 31 C.F.R. Part 21, attached hereto as Exhibit R.

(v) Representations and Warranties. DOE shall have received, in form and substance satisfactory to it, evidence that each of the representations and warranties made by any Obligor in or pursuant to the Loan Documents shall be true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date.

(w) Forms Supplement. DOE shall have received from the Borrower a supplement to this Agreement dated the date hereof containing the forms of the following

documents, which forms shall be satisfactory to DOE in its sole discretion (the "Forms Supplement"):

(i) the Form of Advance Request contemplated by Section 2.3(a) (including the attachments thereto as contemplated by Section 2.3(b));

(ii) the Sample Project Forecast and Overrun Calculation contemplated by Sections 2.3(b)(vi) and 2.9;

(iii) the form of Compliance Certificate contemplated by Section 8.1(d);

(iv) the form of CAEATFA Conveyance/Reconveyance Instrument contemplated by Section 9.5(q); and

(v) the Financial Covenant Examples contemplated by Annex 9.1.

(x) Deer Creek Lease. DOE shall have received, in form and substance satisfactory to it, evidence that the Deer Creek Lease shall not have been amended, modified, terminated, or supplemented since August 6, 2009, without the prior written consent of DOE.

(y) Amendment to Existing Letters of Credit. DOE shall have received, in form and substance satisfactory to it, copies of duly executed amendments to the existing agreements of the Borrower in favor of City National Bank, which amendments shall limit the Liens created by such agreements to the restricted deposits identified on Schedule D-5 to the Information Certificate under the heading "Other".

(z) Davis-Bacon Act. DOE shall have received, in form and substance satisfactory to DOE, in its sole discretion, a fully executed original letter agreement with respect to Section 5.5 of 29 C.F.R. Part 5.

(aa) Due Diligence Review. DOE shall have completed its due diligence review of the Borrower, its Subsidiaries, each of the Projects and all other matters related thereto, and the results thereof shall be satisfactory to DOE in its sole discretion, including, without limitation, evidence that no material issues exist with respect to either Project under the laws of the State of California or any subdivision or local jurisdiction thereof.

(bb) Other Documents and Information. Each of DOE, FFB and the Collateral Trustee shall have received any other certificates, documents, agreements and information respecting the Borrower, each other Obligor, the Projects and the Collateral as it may have reasonably requested.

5.2 Conditions Precedent to FFB Purchase of the Notes. The obligation of FFB to deliver an acceptance notice pursuant to Section 5.1 of the Note Purchase Agreement to

purchase each of the Notes is subject to the prior satisfaction (or waiver in writing) as determined by FFB of each of the following conditions precedent as of the date of the Principal Instrument Delivery Date and as of the Financial Closing Date:

(a) Conditions Precedent in the Funding Agreements. Each condition precedent under the Funding Agreements to the purchase of each of the Notes by FFB shall have been satisfied in the sole determination of FFB.

(b) Receipt of the Principal Instruments. FFB shall have received from DOE each of the Principal Instruments.

(c) Representations and Warranties. Each of the representations and warranties made pursuant to Article VI of this Agreement shall be true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date.

5.3 Advance Approval Conditions Precedent. The obligation of DOE to deliver an Advance Request Approval Notice directing FFB to make each Advance (including the initial Advance and any True-Up Advance) in accordance with the Note Purchase Agreement and the relevant Note is subject to the prior satisfaction (or waiver in writing) as determined by DOE in its sole discretion of each of the following conditions precedent as of a date not later than the third (3rd) Business Day prior to the Requested Advance Date and to their continued satisfaction on the Requested Advance Date for such Advance:

(a) Advance Request; Invoices; Forecasts. DOE shall have received from the Borrower, no later than ten (10) Business Days prior to such Requested Advance Date, an Advance Request and all other information required by Section 2.3 and the relevant Note, and shall have approved any updated Project Forecasts submitted in connection with such Advance Request pursuant to Section 2.3(b)(vi) in its sole discretion.

(b) Representations and Warranties. Each of the representations and warranties made by any Obligor in or pursuant to the Loan Documents (other than the representations and warranties contained in Article 8 of the Note Purchase Agreement) shall be true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) on and as of such date as if made on and as of such date (or, to the extent such representations and warranties specifically relate to an earlier date, on and as of such earlier date), before and after giving effect to the extensions of credit requested to be made on such date.

(c) No Default. No Default or Event of Default shall have occurred and be continuing on such date, before and after giving effect to the extensions of credit requested to be made on such date.

(d) No Material Adverse Change. Since December 31, 2008, no event shall have occurred or could reasonably be expected to occur with respect to either Project, the Borrower, any Subsidiary or the Collateral that, individually or in the aggregate, had or could reasonably be expected to have a Material Adverse Effect.

(e) Milestones. With respect to any portion of any Advance or Advances corresponding to a Project, as of such Requested Advance Date, the Borrower shall not have failed to achieve and maintain any Milestone for such Project.

(f) No Change to Specified Completion Dates. DOE shall have received evidence satisfactory to it, certified by a Responsible Officer of the Borrower, that the completion of each Project is reasonably expected to occur by the Specified Completion Date.

(g) Availability of Funds. DOE shall have received evidence satisfactory to it, including a certification by a Responsible Officer of the Borrower (substantially in the form set forth in the Form of Advance Request), that (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S, (iii) the Cash Equity Condition and any Correction by Commitment Condition shall be satisfied, or, in each case, the Borrower shall have proposed a Corrective Plan in respect thereof that has been approved by DOE and the Borrower has complied with such Corrective Plan and (iv) the requirements of Section 2.3 are met.

(h) Prior Advances. DOE shall have received evidence satisfactory to it, that (i) the proceeds of all Project P Advances with respect to the immediately preceding calendar quarter (or, if no Project P Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project P Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable Advance Requests for such Project P Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project P Advances or as otherwise approved by DOE in its sole discretion (and the Borrower shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance) and (ii) the proceeds of all Project S Advances with respect to the immediately preceding calendar quarter (or, if no Project S Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project S Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable Advance Requests for such Project S Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project S Advances or as otherwise approved by DOE in its sole discretion (and the Borrower shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance).

(i) Aggregate Advances. DOE shall have received evidence satisfactory to it that (i) the aggregate principal amount of all outstanding Advances made with respect to any Project under the Notes, after giving effect to the Advances to be made on the Requested Advance Date, do not exceed the Project Maximum Loan Amount with respect to such Project, subject to adjustment as provided in Section 2.12(h) to the extent applicable, and (ii) the aggregate principal amount of all outstanding Advances made with respect to all Projects under the Notes, after giving effect to such Advances, do not exceed the Maximum Total Loan Amount, subject to adjustment as provided in Section 2.12(h) to the extent applicable.

(j) Borrower Payments and Excess Cost Overruns. DOE shall have received evidence satisfactory to it (i) that (1) the Borrower has paid the Project P Borrower Payments required to have been paid as of the Requested Advance Date; (2) that the amounts corresponding to the Project P Borrower Payments were, or will be, applied towards Eligible Project P Costs; (3) immediately following the Requested Advance Date, the aggregate amount of Project P Borrower Payments made by the Borrower (other than those funded with the proceeds of any withdrawals from the Dedicated Account pursuant to Section 2.12(g)) shall equal or exceed twenty percent (20%) of the Total Project P Costs previously funded and to be funded with the current Advance (including, in the case of any Advance divided into two parts pursuant to Section 2.12(f), the Total Project P Costs to be funded under both the Current Request and the Deferred Request), and (4) any Project P Excess Cost Overruns as of the Requested Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan) and (ii) that (1) the Borrower has paid the Project S Borrower Payments required to have been paid as of the Requested Advance Date; (2) that the amounts corresponding to the Project S Borrower Payments were, or will be, applied towards Eligible Project S Costs; (3) immediately following the Requested Advance Date, the aggregate amount of Project S Borrower Payments made by the Borrower (other than those funded with the proceeds of any withdrawals from the Dedicated Account pursuant to Section 2.12(g)) shall equal or exceed twenty percent (20%) of the Total Project S Costs previously funded and to be funded with the current Advance (including, in the case of any Advance divided into two parts pursuant to Section 2.12(f), the Total Project S Costs to be funded under both the Current Request and the Deferred Request), and (4) any Project S Excess Cost Overruns as of the Requested Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan).

(k) Advance Proceeds. DOE shall have received evidence satisfactory to it that (A) the proceeds of all Project P Advances to be made will be needed for Eligible Project P Costs that have been incurred from and after December 15, 2008 and are due and payable not later than thirty (30) days following the dates of the applicable Advance Requests with respect to services rendered, materials delivered and required deposits, together with a description in sufficient detail of such Eligible Project P Costs , as certified by a Responsible Officer of the Borrower and (B) the proceeds of all Project S Advances to be made will be needed for Eligible Project S Costs that have been incurred from and after December 15, 2008 and are due and payable not later than thirty

(30) days following the dates of the applicable Advance Requests with respect to services rendered, materials delivered and required deposits, together with a description in sufficient detail of such Eligible Project S Costs, as certified by a Responsible Officer of the Borrower.

(l) No Litigation. Except for any Adverse Proceeding described on Schedule D-6 to the Information Certificate (as to which this condition shall apply to adverse developments therein), no Adverse Proceedings are pending or threatened in writing against or affecting the Borrower or any of its Subsidiaries or any of their respective property that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and has not otherwise been disclosed to and expressly waived in writing by DOE.

(m) No Illegality. No applicable Requirements of Law, in the judgment of DOE, is in effect that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated by the Transaction Documents.

(n) Lien Waivers. DOE shall have received evidence satisfactory to it that (i) any unpaid balances or unsettled claims, if any, with contractors or suppliers have been adequately paid or, if being contested or negotiated in good faith, are bonded or otherwise provisioned to the satisfaction of DOE, in its sole discretion, and (ii) all mechanics liens or other liens of such contractors or suppliers (including with respect to any payments made out of the subject Advance) have been released to the satisfaction of DOE, in its sole discretion (it being understood that this Section 5.3(n) shall not apply to any equipment with respect to which the Borrower is making Eligible Progress Payments until title to such equipment passes to the Borrower).

(o) 2009 Unaudited Financial Statements. If the Historical Financial Statements delivered pursuant to Section 5.1(l) do not include Financial Statements for the Fiscal Year ended December 31, 2009 and the first Requested Advance Date occurs prior to the time when audited Financial Statements for such Fiscal Year are required to be delivered pursuant to Section 8.1(c), DOE shall have received on or prior to the first Requested Advance Date unaudited consolidated and consolidating Financial Statements of the Borrower and its Subsidiaries for such Fiscal Year certified by a Responsible Officer of the Borrower (substantially in the form set forth in the relevant portion of the Form of Borrower Certificate (for Financial Documents Delivered at Closing) attached hereto as Exhibit S-2) (x) that they fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in accordance with GAAP applied on a basis consistent with prior years, subject only to the absence of notes to the financial statements and changes resulting from normal audit adjustments, and (y) that such Financial Statements were delivered to DOE for review at least five (5) Business Days prior to the first Requested Advance Date (or within such shorter period as DOE may have agreed to).

(p) Perfection. (i) DOE shall have received a completed Collateral Supplement executed by a Responsible Officer of each Obligor reflecting all assets of the

types referenced in the Collateral Schedules that have been acquired or developed by the Obligors (whether using the proceeds from any Advance or otherwise) since the date of the last Advance Request; and (ii) all other documents required by the Security Documents or under applicable Requirements of Law or reasonably requested by DOE to be filed, registered or recorded or actions to be taken in order to create in favor of the Collateral Trustee, for the benefit of the Secured Parties, a First Priority Lien on the Collateral which is to be paid or reimbursed out of the proceeds of such Advance, in whole or in part, and all other property and assets then owned by the Borrower and any other Obligor required by Sections 7.3 and 7.6, shall have been filed, registered, recorded or taken.

(q) Legal Opinions. DOE shall have received, in form and substance acceptable to it, such executed legal opinions, bring down certificates, reliance letters and other similar documents as may be requested by DOE in form and substance satisfactory to DOE.

(r) Program Requirements. DOE shall have received evidence, in form and substance acceptable to it that the Borrower is in compliance with or shall have satisfied, as applicable, (i) all requirements and approvals pursuant to the Program Requirements, and (ii) all other Applicable Regulations.

(s) Governmental Approvals. DOE shall have received, in form and substance acceptable to it, certification by a Responsible Officer of the Borrower (substantially in the form set forth in the Form of Advance Request) that all material Governmental Approvals, permits (including, without limitation, building permits or notices of commencement) or consents not previously delivered and required for construction, operation or maintenance of the Projects, and such other governmental approvals, permits or consents as DOE may request or as may be required under the Transaction Documents, have been received and, to the extent requested by DOE, copies of such approvals, permits or consents have been delivered to DOE.

(t) Payment of Fees. DOE shall have received, in form and substance satisfactory to it, confirmation that any fees and expenses due and payable hereunder on or prior to the Requested Advance Date have been paid in full.

(u) Conditions Precedent in the Funding Agreements. Each of the conditions precedent (other than delivery of the Advance Request Approval Notice by DOE) to (i) an Advance (including the initial Advance) under Note P in accordance with the Note Purchase Agreement and Note P have been satisfied or (ii) an Advance (including the initial Advance) under Note S in accordance with the Note Purchase Agreement and Note S have been satisfied.

(v) Guarantor Documents. If as of such Requested Advance Date the Borrower has any Domestic Subsidiaries that have not previously become Guarantors in accordance with Section 5.1(a)(iii) or Section 7.6(a) or DOE determines to require any Foreign Subsidiary to become a Guarantor as of such date pursuant to Section 7.6(b),

DOE shall have received fully executed originals of all documents required by Sections 7.6(a) and (b), as applicable, with respect to each such Subsidiary.

(w) Certification of Satisfaction of Conditions. DOE shall have received certification by a Responsible Officer of the Borrower (substantially in the form set forth in the Form of Advance Request) dated the corresponding Requested Advance Date, evidencing the Borrower's satisfaction of all conditions precedent to the requested Advance.

(x) Davis Bacon Act. With respect to the first Advance with respect to each Project which will be used to pay for construction, alteration or repair of a building or work that is financed, in whole or in part, by a loan issued under 42 U.S.C. Sec. 17013, DOE shall have received from the Borrower: (i) evidence satisfactory to DOE that the clauses required by Section 5.5 of 29 C.F.R. Part 5 and the appropriate wage determination(s) of the Secretary of Labor have been inserted into any contract or subcontract for construction, alteration or repair that was awarded prior to the disbursement of funds with respect to such Advance and (ii) a certificate from any contractor awarded such a contract that such contractor and its subcontractors have complied with the provisions of Section 5.5 of 29 C.F.R. Part 5, unless such contractor has certified that there is a substantial dispute with respect to such provisions.

(y) Interim True-Up Advances. With respect to any Interim True-Up Advance, the applicable requirements of Section 2.12 shall have been met (in addition to all other conditions set forth in this Section 5.3 and, to the extent applicable, Section 5.4).

(z) Other Documents and Information. DOE shall have received, in form and substance satisfactory to it, any other certificates, documents, consents, agreements and information respecting the Projects, the matters contemplated by the Transaction Documents, or the Borrower and its Subsidiaries as DOE may reasonably request.

5.4 Additional Conditions Precedent to Each Site-Dependent Advance. In addition to the conditions set forth in Sections 5.1, 5.2, and 5.3 above, the obligation of DOE to deliver an Advance Request Approval Notice directing FFB to make each Site-Dependent Advance with respect to each Project under the Note Purchase Agreement and the relevant Note is subject to the prior satisfaction (or waiver in writing) as determined by DOE in its sole discretion of each of the following conditions precedent as of a date not later than the third (3rd) Business Day prior to the Requested Advance Date of the first such Site-Dependent Advance with respect to such Project and to their continued satisfaction on the Requested Advance Date for such first Site-Dependent Advance for such Project:

(a) Environmental Review. DOE shall have received, in form and substance satisfactory to DOE (i) a Phase I environmental site assessment with respect to the applicable Project prepared in accordance with ASTM standards (and delivery of a Phase II environmental site assessment prepared in accordance with ASTM standards if required by DOE) and associated reliance letters reasonably requested by DOE and (ii) evidence of the satisfaction of any additional environmental requirements then

required for the applicable Project (including required mitigation and completion of the NEPA process and CEQA process, if applicable).

(b) Permits. DOE shall have received, in form and substance satisfactory to DOE, evidence that the Borrower has received all material environmental, regulatory, construction and other Governmental Approvals then required for the applicable Project (including all land use entitlements required for the applicable Project being obtained prior to the first Site-Dependent Advance) and that the same are currently in place and not subject to any waiting periods or appeal.

(c) Real Estate. DOE shall have received, in form and substance satisfactory to DOE, (i) evidence that the Borrower has acquired all fee simple title, leasehold interests, easements and/or other real property interests required for the applicable Project, (ii) if requested by DOE, an executed mortgage or deed of trust with respect to such real property interests in favor of the Collateral Trustee and/or a fixture filing, *provided* that no mortgage or deed of trust shall be required with respect to the Deer Creek Lease, (iii) if applicable, copies of a recorded memorandum of lease and a lessor consent and/or recognition agreement, and (iv) an ALTA survey of such real property, evidence of zoning and legal compliance, a structural engineer's report (if applicable), and ALTA mortgagee's policy with applicable endorsements and any other customary deliveries.

5.5 Conditions Precedent to FFB Advance. The obligation of FFB to make each Advance (including the initial Advance) under the Note Purchase Agreement and the relevant Note is subject to the prior satisfaction (or waiver in writing) as determined by FFB of each of the following conditions precedent as of the date of the relevant Advance Request and as of the Advance Date:

(a) Receipt of Advance Request Approval Notice. FFB shall have received from DOE an Advance Request Approval Notice.

(b) Absence of Drawstop Notice. No Drawstop Notice shall have been delivered to DOE or FFB.

5.6 Advance Deductions. Unless the Borrower shall have prepaid the applicable Advance in the amount of such excess as provided in Section 3.6(c)(ii), prior to each Requested Advance Date immediately following delivery of an Agreed-Upon Procedures Report indicating that proceeds of any Advance were not applied to pay, or reimburse for, Eligible Project Costs for the relevant Project for which such funds were drawn, the Borrower shall (a) in the relevant Advance Request, deduct from the total amount of the Advance or Advances to be made on such Requested Advance Date an amount equal to the amount that would otherwise have been prepayable by the Borrower pursuant to Section 3.6(c)(ii), and (b) together with the relevant Advance Request, deliver, by an Acceptable Delivery Method, a certificate executed by a Responsible Officer, substantially in the form set forth in the Form of Advance Request, certifying as to the amount of such deduction, *provided* that if the aggregate amount of the Advances requested to be made on such Requested Advance Date is less than the total amount to be deducted on such Requested Advance Date, the Borrower shall deduct an amount equal to the

total amount of the Advance or Advances requested to be made on such date and the remaining shortfall shall be deducted by the Borrower from Advances requested in future Advance Requests made on future Requested Advance Dates until such amount has been deducted in full.

5.7 Satisfaction of Conditions Precedent. DOE hereby agrees that (x) by delivering the Principal Instruments on the Principal Instrument Delivery Date, DOE shall be deemed to have approved of or consented to, or to be satisfied with, each of the matters set forth in Section 5.1 that must be approved or consented to by, or be satisfactory to, DOE, and (y) FFB, by delivering an acceptance notice under Section 5.1 of the Note Purchase Agreement or making any Advance under the Note, shall be deemed to have approved of or consented to, or to be satisfied with, each of the matters set forth in Section 5.1 or in Section 5.2 which must be approved or consented to by, or satisfactory to, FFB.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

To induce DOE to enter into this Agreement and to arrange for FFB to purchase the Notes and offer extensions of credit thereunder, the Borrower hereby represents and warrants to and in favor of DOE and FFB as of (w) the date hereof, (x) the Principal Instrument Delivery Date, (y) the Financial Closing Date and (z) each Advance Date that:

6.1 Organization and Existence. Each of the Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization (except in the case of any Subsidiary where the failure to be in good standing, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect) and (b) is duly qualified and in good standing in each jurisdiction where the failure to so qualify and be in good standing, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.2 Power; Authorization; Enforceable Obligations. Each of the Borrower and its Subsidiaries has all requisite power and authority to (a) own or hold under lease and operate the property it purports to own or hold under lease, (b) carry on its business as now being conducted and as proposed to be conducted in respect of the Projects and the Business Plan, (c) incur Indebtedness and create Liens on its properties pursuant to the Transaction Documents, and (d) execute, deliver, perform and observe its obligations under each of the Transaction Documents to which it is a party (which includes the issuance of the Warrants and the shares issuable upon exercise of the Warrants). Each of the Borrower and its Subsidiaries has taken all necessary corporate or other action to authorize the execution, delivery, performance and observance of each of the Transaction Documents to which it is a party and has duly executed and delivered each Transaction Document to which it is a party. Each such Transaction Document constitutes a legal, valid and binding obligation of such Person enforceable against each such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the

enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

6.3 Capitalization. As of the Principal Instrument Delivery Date, (a) Schedule A-7 to the Information Certificate sets forth for the Borrower and each of its Subsidiaries all stock, limited liability company membership interests, partnership interests, trust interests, options, warrants and other equity interests, whether or not evidenced by certificates or instruments, that are (i) owned by such Person or (ii) issued by such Person and currently outstanding and (b) except as set forth on Schedule A-7 to the Information Certificate, neither the Borrower nor any Subsidiary is party to or bound by any subscription, voting trust, registration rights or other agreements relating to equity securities of such Person.

6.4 Solvency. Each Obligor is and, upon and after giving effect to all transactions contemplated by the Transaction Documents, will be Solvent.

6.5 Eligibility of Borrower, Projects. The Borrower has satisfied each of the conditions contained in the Program Requirements (a) to be classified as an Eligible Applicant and (b) required to classify each Project as an Eligible Project.

6.6 No Conflicts; Consents.

(a) The execution, delivery, performance and observance of this Agreement and the other Loan Documents, the issuance of the Notes, the Warrants and the shares issuable upon exercise of the Warrants, the borrowings under the Funding Agreements and Reimbursement Obligations hereunder do not and will not (i) violate, contravene or result in any breach or constitute any default under any Requirements of Law, any Organizational Document or any material Contractual Obligation of the Borrower, (ii) violate, contravene or result in any breach or constitute any default under (x) any Requirements of Law or any Contractual Obligation of any Subsidiary of the Borrower, except to the extent any such violation, contravention, breach or default, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, or (y) any Organizational Document of any Subsidiary of the Borrower, (iii) result in or require the creation of any Lien upon any of its revenues, properties or assets pursuant to any Requirements of Law or Contractual Obligation, except for Liens created by the Security Documents, or (iv) require the consent or approval of, or any notice to or filing with, any Governmental Authority, any Equity Owner of the Borrower or any other Person other than those items set forth in Schedule 6.6 to the Information Certificate or, in the case of an Additional Guarantor, in the applicable Subsidiary Joinder Agreement, each of which has been obtained and is in full force and effect.

(b) The use of the proceeds from the Advances do not and will not (i) violate, contravene or result in any breach or constitute any default under (x) any Requirements of Law or any Contractual Obligation of the Borrower or any of its Subsidiaries, except to the extent any such violation, contravention, breach or default, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, or (y) any Organizational Document of the Borrower or any of its Subsidiaries, (ii) result in or require the creation of any Lien upon any of its revenues,

properties or assets pursuant to any Requirements of Law or Contractual Obligation, except for Liens created by the Security Documents, or (iii) require the consent or approval of, or any notice to or filing with, any Governmental Authority, any Equity Owner of the Borrower or any other Person other than those items required as of the Principal Instrument Delivery Date or, to the Knowledge of the Borrower, required thereafter, in each case as set forth on Schedule 6.6 to the Information Certificate (collectively, together with any consents or approvals described in clause (a)(iii) above, "Required Consents"), each of which has been obtained and is in full force and effect (or, in the case of those required after the Principal Instrument Delivery Date, will be obtained when so required and will thereafter be in full force and effect).

6.7 Material Contracts. As of the Principal Instrument Delivery Date, the applicable schedules to the Information Certificate set forth all of the Material Contracts of the Borrower and its Subsidiaries. Neither the Borrower nor any of its Subsidiaries is in default under any of its Contractual Obligations (now existing or hereafter entered into) in any respect which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

6.8 Permits, etc. Each of the Borrower and its Subsidiaries has, and is in compliance with, all Governmental Approvals required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently or proposed to be owned, leased, managed or operated, or to be acquired, by such Person, which, individually or in the aggregate, if not obtained, could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such Governmental Approval and there is no claim that any thereof is not in full force and effect, except, to the extent any such condition, event or claim, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.9 Litigation. Except for any Adverse Proceeding described in Schedule D-6 to the Information Certificate (as to which this Section 6.9 shall apply to adverse developments therein), there are no Adverse Proceedings pending or threatened in writing against or affecting the Borrower or any of its Subsidiaries or any of their respective property that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or that have not otherwise been disclosed to and expressly waived in writing by DOE.

6.10 Indebtedness. Neither the Borrower nor any of its Subsidiaries has any outstanding Indebtedness other than Permitted Indebtedness.

6.11 Liens. Except for Permitted Liens, (a) the assets of the Borrower and each of its Subsidiaries are owned and held free and clear of any Liens and (b) no financing statement or other similar notice of any Lien with respect to any assets of the Borrower or any Subsidiary, which such Person has authorized any other Person to sign or file or record, is on file or of record with any public office.

6.12 Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a

consolidated basis, of the Borrower and its Subsidiaries as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the Borrower and its Subsidiaries for each of the periods then ended, subject, in the case of any such unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year end adjustments. As of the Principal Instrument Delivery Date, neither the Borrower nor any of its Subsidiaries has any contingent liability or liability for taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Borrower and any of its Subsidiaries taken as a whole.

6.13 Information Certificate; Project Budgets and Business Plans.

(a) As of the Principal Instrument Delivery Date, the Information Certificate and the Collateral Schedules are true, correct and complete and contain no material misstatements or omissions.

(b) The Project Budgets, the Project Forecasts and the Business Plan, as amended or supplemented with the approval of DOE in accordance with the provisions of this Agreement, (i) are complete and based on reasonable assumptions made in good faith, (ii) are consistent with the provisions of the Transaction Documents, and (iii) fairly represent the Borrower's expectation as to the matters covered thereby as of the date of the representation.

6.14 Security Documents. The provisions of the Security Documents are effective to create legal, valid and enforceable security interests in the Collateral described therein in favor of the Collateral Trustee, for the benefit of the Secured Parties. Such security interests (i) constitute perfected and continuing security interests on the Collateral upon the taking of all actions referred to in Section 3.1(a)(iii) of the Security Agreement (except to the extent expressly provided in this Agreement or the Security Agreement with respect to certain assets other than Program Assets), and (ii) are First Priority Liens on such Collateral.

6.15 Properties.

(a) Each of the Borrower and its Subsidiaries owns or holds (i) good and marketable legal and beneficial title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid rights licensed from third parties in (in the case of licensed interests in Intellectual Property), and (iv) good title (in the case of all other personal property) in all material property and assets of such Person, in each case free and clear of any Lien of any kind except for Permitted Liens. The Borrower and each of its Subsidiaries has or will obtain in a timely manner all rights or property required for the design, construction and operation of the Projects.

(b) Except for changes not prohibited by the Loan Documents, (i) Schedule B-1 to the Information Certificate sets forth for the Borrower and each of its Subsidiaries the location (including county and zip code) of all real property owned or

leased by such Person; if such property is leased, the landlord and the term of the lease; if such property is held in fee, the holder of any mortgage on such real property; and where such Person's chief executive office and chief operating office is located, and (ii) the books and records of the Borrower and each of its Subsidiaries pertaining to accounts, contract rights, inventory and other assets are located at such Person's chief executive office except as indicated on Schedule B-1 to the Information Certificate.

6.16 Intellectual Property.

(a) The Borrower is the sole and exclusive owner of the entire right, title and interest in and to that Intellectual Property purported to be owned by the Borrower, and the Borrower and its Subsidiaries otherwise have the right pursuant to a valid written license or other agreement to use all Intellectual Property necessary for the construction, operation and use of their respective businesses as currently operated and as proposed to be operated, free and clear of all Liens, except for Permitted Liens.

(b) All of the registrations, issuances and applications set forth on the IP Schedules are valid, in full force and effect and have not expired or been cancelled, abandoned or otherwise terminated, and payment of all renewal and maintenance fees and expenses in respect thereof, and all filings related thereto, have been duly made, except as otherwise permitted under this Agreement. The Borrower and each of its Subsidiaries has adequate and appropriate security measures and safeguards in place to protect each item of Intellectual Property (including, without limitation, Trade Secrets) owned by the Borrower and each of its Subsidiaries from illegal or unauthorized access or use by its personnel or third parties. The Borrower and each of its Subsidiaries has adopted a written information security program designed to protect all confidential information and Trade Secrets. No Person has gained unauthorized access to or made any unauthorized use of any confidential information or Trade Secret of the Borrower or any of its Subsidiaries. All registrations, issuances and applications set forth on the IP Schedules are in the name of the Borrower. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Borrower and each of its Subsidiaries use appropriate statutory notices of registration in connection with their respective use of registered Trademarks owned by the Borrower and proper marking practices in connection with the use of Borrower's issued patents. The Borrower is diligently prosecuting all patent applications it has filed, except as otherwise permitted under this Agreement. The Borrower is diligently preparing and filing patent applications for all identified inventions that have come to the attention of senior management which the Borrower, in its reasonable business judgment, believes to be patentable and better protected under a patent as opposed to any other form of Intellectual Property. To the Knowledge of the Borrower, it has complied with its duties of candor and good faith with respect to its dealings with the U.S. Patent and Trademark Office and similar foreign authorities.

(c) Each license or contract set forth on the IP Schedules is a legal, valid and binding obligation of the Borrower or one of its Subsidiaries, as the case may be, is in full force and effect and is enforceable against the Borrower or one of its Subsidiaries, as the case may be, and, to the Knowledge of the Borrower, the other parties

thereto, subject to any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and general principles of equity. None of the Borrower and its Subsidiaries is in material breach, violation or default under any such license or contract and no event has occurred that, with notice or lapse of time or both, would constitute such a material breach, violation or default by the Borrower or any of its Subsidiaries, or, to the Knowledge of the Borrower, the other parties thereto. Upon the Principal Instrument Delivery Date, the Borrower or its applicable Subsidiaries will continue to have the right to use all Intellectual Property licensed pursuant to the licenses and contracts listed on the IP Schedules on identical terms and conditions as the Borrower or such Subsidiaries enjoyed immediately prior to the Principal Instrument Delivery Date.

(d) The conduct of the business of the Borrower and each of its Subsidiaries does not infringe or otherwise violate any Intellectual Property or other proprietary rights of any other Person, and there is no action, dispute, claim, suit, proceeding, arbitration, mediation or investigation pending or, to the Knowledge of the Borrower, threatened alleging any such infringement or violation or challenging the Borrower's or any of its Subsidiaries' rights in or to any Intellectual Property owned by the Borrower or any of its Subsidiaries and, to the Knowledge of the Borrower, there is no existing fact or circumstance that would be reasonably expected to give rise to any such action, dispute, claim, suit, proceeding, arbitration, mediation or investigation, in each case, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. No holding, decision, or judgment has been rendered against the Borrower or any of its Subsidiaries in any action or proceeding before any court or administrative authority challenging the validity of the Borrower's or any of its Subsidiaries' rights to register, or the Borrower's or any of its Subsidiaries' rights to own or use, any Intellectual Property used in the business of the Borrower or any of its Subsidiaries and no such action or proceeding is pending or threatened in writing against the Borrower or any of its Subsidiaries, in each case, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Borrower, no Person is infringing or otherwise violating any Intellectual Property owned by the Borrower or any of its Subsidiaries or any rights of the Borrower or any of its Subsidiaries in any Intellectual Property licensed by the Borrower or any of its Subsidiaries, in each case, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

6.17 Insurance. The properties of the Borrower and each of its Subsidiaries are adequately insured with financially sound and reputable insurers and in such amounts, with such deductibles and covering such risks and otherwise on terms and conditions as are customarily carried or maintained by Persons of established reputation of similar size and engaged in similar businesses. Such insurance complies with the requirements of Section 7.4. Schedule D-3 to the Information Certificate sets forth a list of all insurance maintained by or on behalf of the Borrower and its Subsidiaries as of the Principal Instrument Delivery Date and, as of the Principal Instrument Delivery Date, all premiums in respect of such insurance have been paid.

6.18 No Defaults. No Default or Event of Default has occurred and is continuing. There is no breach of any material obligation under any Transaction Document and

no notices of breach of any Transaction Document have been issued, entered or received by the Borrower. The representations and warranties made by the Borrower or any of its Subsidiaries or, to the Borrower's Knowledge, any other Person in any Project Documents were true and correct in all material respects as of the date made.

6.19 No Restricted Payments. Since December 31, 2008, the Borrower has not paid nor become obligated to pay (a) any fee or commission to any broker, finder or intermediary for or on account of arranging the financing of the transactions contemplated by the Transaction Documents or (b) any other payment not otherwise permitted pursuant to Section 9.7.

6.20 No Material Adverse Effect. Since December 31, 2008, no event has occurred or could reasonably be expected to occur with respect to either Project, the Borrower, any Subsidiary or the Collateral that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

6.21 Compliance with Laws, Program Requirements. The Borrower and each of its Subsidiaries is in compliance with (i) all Requirements of Law (other than the Program Requirements) except to the extent that the failure to comply therewith could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect and (ii) all Program Requirements with respect to each of the Projects.

6.22 Investment Company Act. Neither the Borrower nor any of its Subsidiaries is required to register as an "investment company", or a company "controlled" by a company that is required to register as an "investment company", within the meaning of the Investment Company Act of 1940.

6.23 Margin Stock. No part of the proceeds of any Advance, and no other extensions of credit under the Funding Agreements, will be used for any purpose that violates the provisions of Regulation T, U or X of the Board.

6.24 Corrupt Practices. The Borrower and each of its Subsidiaries and Affiliates are in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and to the best of its Knowledge any foreign counterpart thereto. Neither the Borrower nor any of its Subsidiaries nor any agent on behalf of the Borrower or any of its Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to the Borrower, any Subsidiary or Affiliate or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq.

6.25 Taxes. (a) Each of Borrower and its Subsidiaries has filed or has caused to be timely filed all income and other material federal, state, foreign, and other tax returns that are required to be filed by it and has paid all taxes for which it is directly or indirectly liable (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) and any assessments made against it or any of its property, assets, income,

businesses, and franchises, and all other taxes, fees or other charges imposed on it or any of its property by any governmental authority, other than any taxes, fees or other charges the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Borrower or its Subsidiaries, as the case may be; (b) neither Borrower nor any of its Subsidiaries has given or been requested to give a waiver of the statute of limitations relating to the payment of any federal, state, local and foreign taxes or other impositions, and no tax lien has been filed with respect to Borrower or any of its Subsidiaries other than a Lien described in Section 9.3(c); (c) neither the Borrower nor any of its Subsidiaries has received any notices of proposed, outstanding or assessed deficiencies or adjustments with respect to tax matters from any Governmental Authority; (d) neither the Borrower nor any of its Subsidiaries is a party to or bound by any tax sharing agreement; and (e) except as otherwise indicated in the Collateral Schedules, each Foreign Subsidiary that is not a Guarantor is a "controlled foreign corporation" (as defined in section 957 of the Code).

6.26 Environmental Laws. Except as disclosed in Schedule D-9 to the Information Certificate, the Borrower and each of its Subsidiaries is and has been in compliance in all material respects with all Environmental Laws applicable to its business or operations. There are no material claims or investigations pursuant to Environmental Laws or otherwise relating to exposure to hazardous or harmful substances pending or threatened with respect to (i) the Borrower or any of its Subsidiaries or (ii) except as (A) would not reasonably be expected to result in material liability or obligations of the Borrower or any of its Subsidiaries or (B) are undertaken in the ordinary course by Borrower or any of its Subsidiaries and do not identify material liabilities or obligations pursuant to Environmental Laws, any of their respective property.

6.27 Employment and Labor Contracts.

As of the Principal Instrument Delivery Date:

(a) Schedule D-7 to the Information Certificate sets forth for the Borrower and each of its Subsidiaries: (i) a list of all employment, severance, retention, consulting and management agreements, all non-compete and non-solicitation agreements and all indemnification agreements or similar arrangements to which such Person is party with any past or present member, manager, officer, director, employee or consultant of such Person and (ii) a list of the people who are, in the Person's reasonable belief, key employees of the Person.

(b) Except as set forth on Schedule D-7 to the Information Certificate, neither the Borrower nor any of its Subsidiaries is or has been within the past two (2) years (i) a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent or (ii) subject to any labor disputes, strikes or work stoppages, requests for arbitration, grievance proceedings or union negotiations or organizational efforts. There has not been in the past three years, any organized effort or demand for recognition or certification or attempt to organize employees of the Borrower or any of its Subsidiaries by any labor organization.

(c) Except as set forth on Schedule D-7 to the Information Certificate, there are no past or present members, managers, officers, directors, employees and consultants (i) who have developed intellectual property on behalf of the Borrower or any of its Subsidiaries and who have not executed an agreement assigning Intellectual Property to the Borrower or one of its Subsidiaries, as the case may be, (ii) who have received access to Intellectual Property on behalf of the Borrower or any of its Subsidiaries and who have not executed a confidentiality agreement or (iii) who have been employed by the Borrower or any of its Subsidiaries and have not executed a non-compete and nonsolicitation agreement.

6.28 Davis-Bacon Act. The Borrower has taken all steps necessary to ensure that all laborers and mechanics employed by contractors or subcontractors employed during construction, alteration or repair that is financed, in whole or in part, by a loan issued under 42 U.S.C. Sec. 17013 shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40, United States Code.

6.29 ERISA.

(a) As of the Principal Instrument Delivery Date, Schedule D-8 to the Information Certificate sets forth for the Borrower and its Subsidiaries a list of each Plan maintained, sponsored or contributed to by (or required to be contributed to by) such Person as of such date and each Plan under which as of such date any such Person has or could reasonably be expected to incur any material liability, either individually or in the aggregate and whether direct, indirect, choate or inchoate. Neither the Borrower nor any of its Subsidiaries has any direct or indirect liability, whether contingent or otherwise, to the PBGC or to or in respect of any Plan that is or was subject to Title IV of ERISA or as a result of being treated as a single employer under Section 4001 of ERISA or Section 414 of the Code. Each Plan has been established, maintained and administered in accordance with its terms and in compliance in all material respects with the applicable provisions of ERISA, the Code and all other applicable Requirements of Law.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, individually or in the aggregate, has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any material liability under Title IV of ERISA with respect to any Pension Plan or any Multiemployer Plan; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan that

could be material; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

6.30 OFAC and USA PATRIOT Act.

(a) None of the Borrower, any other Obligor or any of their respective Subsidiaries is a Prohibited Person, and the Borrower, each Obligor and all such Subsidiaries are in compliance with all applicable published orders, rules and regulations of OFAC.

(b) Neither the Borrower nor any other Obligor, nor any of their members, directors, officers, parents or Subsidiaries: (x) is subject to United States or multilateral economic or trade sanctions in which the United States participates; (y) is owned or controlled by, or act on behalf of, any governments, corporations, entities or individuals that are subject to United States or multilateral economic or trade sanctions in which the United States participates; or (z) is a Prohibited Person or is otherwise named, identified or described on any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom United States persons may not conduct business, including but not limited to lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State.

(c) None of the Collateral is traded or used, directly or indirectly by a Prohibited Person or by a Person organized in a Prohibited Jurisdiction.

(d) The Borrower and each other Obligor has established an anti-money laundering compliance program if and as required by the USA PATRIOT Act.

6.31 Common Enterprise. The successful operation and condition of each of the Obligors is dependent on the continued successful performance of the functions of the group of the Obligors as a whole and the successful operation of each of the Obligors is dependent on the successful performance and operation of each other Obligor. Each Obligor expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Obligors and (ii) the credit extended by the Lender Parties to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Obligor has determined that execution, delivery, and performance of this Agreement and any other Transaction Documents to be executed by such Obligor is within its purpose, will be of direct and indirect benefit to such Obligor, and is in its best interest.

6.32 Warrants.

(a) The Warrants to be issued by the Borrower to DOE have been duly and validly authorized and, when issued and delivered as provided in the Warrants, will be duly and validly issued and the issuance of such Warrants will not be subject to any preemptive or similar rights (other than any as have been waived prior to the date hereof

pursuant to the applicable Required Consents listed in Schedule 6.6 to the Information Certificate in form and substance satisfactory to DOE).

(b) The Warrant Shares initially issuable upon exercise of the Warrants have been duly authorized and validly authorized and reserved for issuance upon exercise of the Warrants and, when issued and delivered upon exercise of the Warrants against payment of the Exercise Price (as defined in the Warrants), will have been duly and validly issued and fully paid and non-assessable, and the issuance of such Warrant Shares will not be subject to any preemptive or similar rights (other than any as have been waived prior to the date hereof pursuant to the applicable Required Consents listed in Schedule 6.6 to the Information Certificate in form and substance satisfactory to DOE).

(c) Neither the Borrower nor any Person acting on its behalf has taken any action (including any offering of any securities of the Borrower) under circumstances which would require the integration of such offering with the offering of any of the Warrants or Warrant Shares under the Securities Act , and the rules and regulations of the SEC promulgated thereunder, which might subject the offering, issuance or sale of any of the Warrant or Warrant Shares to DOE pursuant to this Agreement to the registration requirements of the Securities Act.

6.33 Federal Funding. As of the Principal Instrument Delivery Date, no application has been delivered by the Borrower to, and no application is pending review or approval by, any Governmental Authority for allocation of Federal Funding to any Project (it being understood that the Borrower may seek supplemental funding from states or other non-federal government entities in the United States in connection with any part of the Projects, provided that such supplemental funding is permitted by the Program Requirements).

6.34 Disclosure.

(a) Except as set forth on Schedule 6.34 to the Information Certificate, the information, reports, financial statements, exhibits and schedules furnished by or on behalf of the Borrower or any Subsidiary to any Lender Party or its respective designees, agents or representatives in connection with the negotiation, preparation or delivery of the Conditional Commitment Letter, dated June 23, 2009 between DOE and the Borrower or this Agreement and the other Loan Documents, including the Application, the Collateral Schedules and the Information Certificate, or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified).

(b) All information furnished after the date hereof by or on behalf of the Borrowers or any Subsidiary to any Lender Party or its respective designees, agents or representatives in connection with this Agreement or the other Transaction

Documents, including the Information Certificate and the Collateral Schedules, and the transactions contemplated hereby and thereby, when taken as a whole and together with all information furnished prior to the date hereof, shall not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified).

(c) To the Knowledge of Borrower or any of its Subsidiaries there is no fact (other than facts generally known to the public that relate to changes in the automotive industry or to conditions in the U.S. or global economy or capital or financial markets generally or to changes in general legal, tax, regulatory, political or business conditions) that, after due inquiry, could reasonably be expected to have a Material Adverse Effect or that is a material fact which has been disclosed to third parties in connection with the Borrower's capital-raising activities, in each case that has not been disclosed herein or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to any Lender Party for use in connection with the transactions contemplated hereby.

6.35 Public Statements. Since June 23, 2009, neither the Borrower nor any Subsidiary, nor any director, officer, employee or other agent affiliated with the Borrower or any Person affiliated with any of the foregoing, has made any press announcements about the Projects, the Loans or any Loan Documents, or any public statements about the Loans or any Loan Documents, (a) on or prior to the date hereof, without the prior approval of the Director of the ATVM Program at DOE, or (b) after the date hereof, in violation of Section 9.26.

6.36 CAEATFA. Neither the Borrower nor any of its Subsidiaries has misrepresented any information in any agreement with CAEATFA or in its application to CAEATFA.

ARTICLE VII

AFFIRMATIVE COVENANTS

The Borrower hereby agrees that until the date all of the Note P Obligations and the Note S Obligations have been paid in full (other than unasserted contingent indemnity obligations under Section 12.8) and the Loan Commitment Amounts have been reduced to zero:

7.1 Maintenance of Existence, etc.

(a) Except as otherwise permitted under Section 9.5, the Borrower shall, and shall cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and governmental authorizations, qualifications, franchises, licenses and permits material to its business and to conduct its business in each jurisdiction in which its business is conducted; *provided*, unless otherwise required by any other provision of this Agreement or any other Loan Document, neither the Borrower nor any of its Subsidiaries shall be required to preserve

any such right or governmental authorizations, qualifications, franchise, licenses and permits or (to the extent otherwise permitted by Section 9.5) existence if (i) such Person in the exercise of its reasonable business judgment shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person and (ii) the loss thereof is not disadvantageous in any material respect to such Person or to any Lender Party.

(b) The Borrower shall, and shall cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other Person which is an Affiliate of such Person; (ii) not commingle its funds or assets with those of any other Person which is an Affiliate of such Person; and (iii) provide that its board of directors or other analogous governing body will hold all appropriate meetings or act by written consent to authorize and approve such entity's actions in accordance with appropriate corporate governance practice as required by applicable Requirements of Law, which meetings or actions by written consent will be separate from those of other entities.

7.2 Maintenance of Property. The Borrower shall, and shall cause each of its Subsidiaries to, (a) maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all assets used or useful in its business, and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (b) comply at all times with the provisions of all Leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except, in the case of each of (a) and (b), where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.3 Intellectual Property.

(a) The Borrower shall, within thirty (30) days of the end of each fiscal quarter, report to the DOE and the Collateral Trustee (by delivery of a Collateral Supplement setting forth the relevant information) with respect to (i) the filing of any application to register or issue any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, any state registry or foreign counterpart of the foregoing (whether such application is filed by the Borrower, any of its Subsidiaries, or through any agent, employee, licensee, or designee thereof), (ii) the registration of any Intellectual Property by any such office, (iii) the registration of any domain name, the loss of which could reasonably be expected to result in a Material Adverse Effect, and (iv) any new material licenses or other agreements related to Intellectual Property entered into by the Borrower or any of its Subsidiaries.

(b) In addition to any filings required pursuant to Section 3.7(b) of the Security Agreement, the Borrower shall, and shall cause each Guarantor to, promptly upon the reasonable request of the DOE, execute and deliver to the DOE any document required to acknowledge, confirm, register, record, or perfect the DOE's interest in any part of the Borrower's or any Guarantor's Intellectual Property, whether now owned or hereafter acquired by the Borrower or any Guarantor, including, without limitation,

Copyright Security Agreements, Patent Security Agreements, and Trademark Security Agreements and Collateral Supplements attaching updated IP Schedules.

(c) The Borrower shall promptly notify the DOE if it knows or has reason to know that any material Intellectual Property owned or used by the Borrower or any of its Subsidiaries becomes, as applicable, (i) abandoned or dedicated to the public or placed in the public domain, (ii) invalid or unenforceable, or (iii) subject to any adverse action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court.

(d) The Borrower shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any domain name registrar or any foreign counterpart of the foregoing, to pursue any application and maintain any registration or issuance (including, without limitation, the timely payment of all renewal and maintenance fees) of each Trademark, patent, copyright and domain name owned by the Borrower or any of its Subsidiaries which is now or shall become included in the Intellectual Property which the Borrower, in its reasonable business judgment, believes should be pursued or maintained.

(e) The Borrower shall continue to diligently prepare and file patent applications for all identified inventions that have come to the attention of senior management personnel, which the Borrower, in its reasonable business judgment believes to be patentable and better protected under a patent as opposed to any other form of Intellectual Property.

(f) The Borrower shall, and shall cause each of its Subsidiaries, to protect the confidentiality of all material Trade Secrets and document the existence of any such Trade Secrets customarily reduced to writing or other fixed form in accordance with Prudent Industry Practice. Without limiting the generality of the foregoing, the Borrower and each of its Subsidiaries has in place, and shall maintain, the following practices, at a standard at least as high as those consistent with industry standards:

(i) requiring its employees, consultants and any other Persons with access to confidential information or Trade Secrets to execute confidentiality and non-disclosure agreements obligating such employee, consultant or other Person to keep confidential the Borrower's and its Subsidiaries' confidential information and Trade Secrets;

(ii) requiring its employees (and Persons who have been hired to create work products for the Borrower or any of its Subsidiaries to own) to execute assignment agreements which provide for the assignment to the Borrower or its applicable Subsidiary of all right, title and interest in and to all Intellectual Property that such employee or Person creates in connection with its employment for or contract with the Borrower or any of its Subsidiaries;

(iii) labeling and restricting access to confidential information and documents, including restricting physical access to the premises where such confidential information and documents are stored; and

(iv) establishing procedures to ensure the ongoing documentation of any Trade Secrets customarily reduced to writing or other fixed form in accordance with Prudent Industry Practice and record keeping of Trade Secrets.

The Borrower and each of its Subsidiaries has complied in all material respects with the foregoing practices, and there have been no material violations of such practices. The Borrower and each of its Subsidiaries shall maintain the foregoing practices to ensure the ongoing protection of Trade Secrets, documentation of Trade Secrets customarily reduced to writing or other fixed form in accordance with Prudent Industry Practice and record keeping of Trade Secrets to ensure the availability and access to such Trade Secrets to the DOE upon an Event of Default.

(g) In the event that any material Intellectual Property (i) owned by the Borrower or any of its Subsidiaries or (ii) exclusively licensed to the Borrower or any of its Subsidiaries is infringed, misappropriated, or diluted by any Person in a manner that materially harms the Borrower or any of its Subsidiaries, the Borrower shall promptly notify the DOE and take, or cause its Subsidiaries to take, actions that are reasonable and appropriate under the circumstances (to the extent permitted by applicable law and under any applicable license or contract to which the Borrower or any of its Subsidiaries is a party) to stop such infringement, misappropriation, or dilution and protect its or its Subsidiaries' rights in such Intellectual Property.

(h) In the event that the Borrower or any of its Subsidiaries receives any written notice or communication alleging that the Borrower or any of its Subsidiaries or the conduct of the Borrower's or any of its Subsidiaries' business is infringing, misappropriating, diluting or otherwise violating any Intellectual Property owned or controlled by any Person other than the Borrower and each of its Subsidiaries, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Borrower shall promptly report such notice or communication to the DOE and take, or cause its Subsidiaries to take, actions that are reasonable or appropriate under the circumstances.

(i) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Borrower and each of its Subsidiaries shall use proper statutory notice in connection with its use of any Intellectual Property owned by the Borrower or any of its Subsidiaries.

7.4 Insurance.

(a) The Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, replacement value casualty insurance, public liability insurance, third party property damage insurance, business interruption insurance

and other insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and its Subsidiaries as are customarily carried or maintained under similar circumstances by Persons of established reputation of similar size and engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons and reasonably satisfactory to DOE.

(b) Each such casualty, property and business interruption insurance policy will name the Collateral Trustee as loss payee. Each such liability policy will name DOE, FFB and the Collateral Trustee as additional insureds. In the case of any key employee life insurance policy and, upon request of DOE, any other insurance policy, the Borrower will cause such policy to be collaterally assigned to the Collateral Trustee. Each insurance policy will provide for thirty (30) days' written notice to DOE prior to termination or expiration of any coverage or any material changes thereto and such other endorsements as DOE may require. So long as any principal amount of any Loan is outstanding, the Borrower and its Subsidiaries shall (x) promptly upon renewal of any insurance policy, deliver, or cause to be delivered, to DOE a certificate of insurance with respect to such policy and (y) notify DOE in writing of any change of insurance carrier within thirty (30) days of such change.

(c) If at any time DOE is not in receipt of written evidence that all insurance coverage satisfying the requirements of Sections 7.4(a) and (b) (collectively, the "Required Insurance") is in full force and effect, DOE shall have the right, without notice to the Borrower, to take such action as DOE deems necessary to protect the interests of the Secured Parties in the Collateral, including the obtaining of such insurance coverage as DOE in its sole discretion deems appropriate and all expenses incurred by the DOE in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Borrower to DOE upon demand and until paid shall be secured by the Security Documents and shall bear interest at the Late Charge Rate applicable to the last Advance made to the Borrower prior to the date upon which DOE obtains such insurance.

7.5 Event of Loss.

(a) If any event which may give rise to an Event of Loss shall occur, the Borrower shall, and shall cause each of its Subsidiaries to, (i) in accordance with Section 8.3(f), upon discovery or receipt of notice of any such event provide written notice thereof to DOE, (ii) diligently pursue all its rights to compensation against all relevant insurers, reinsurers, Governmental Authorities and other third parties, as applicable, in respect of such event, (iii) not, without the written consent of DOE compromise or settle any claim with respect to any such event involving an amount in excess of $25,000,000 per claim; and (iv) pay or apply all Net Cash Proceeds stemming from an Event of Loss in accordance with the remaining provisions of this Section 7.5.

(b) The Borrower shall use commercially reasonable efforts to cause all Net Cash Proceeds in respect of an Event of Loss to be paid by the relevant insurers, reinsurers, Governmental Authorities and other third parties, as applicable, directly to the

Collateral Trustee as loss payee and, if paid to the Borrower (or its Subsidiaries), such Net Cash Proceeds shall be received in trust and for the benefit of the Collateral Trustee segregated from other funds of the Borrower (or such Subsidiary), and shall be forthwith paid over to the Collateral Trustee, in the same form as received (with any necessary endorsement).

(c) Upon the occurrence of an Event of Loss with respect to which Net Cash Proceeds are payable in respect of a single loss in an amount not in excess of $25,000,000, so long as no Event of Default has occurred and is continuing and the Borrower delivers a Reinvestment Notice with respect to such Net Cash Proceeds to DOE, the Collateral Trustee shall disburse such Net Cash Proceeds to the Borrower, and the Borrower shall apply such Net Cash Proceeds to the payment of the costs of repair or restoration of the portion of the Project or other property lost or damaged. All Net Cash Proceeds received by the Borrower (or its Subsidiaries) under this Section 7.5(c) in connection with an Event of Loss shall be held in an interest-bearing account segregated from other funds of the Borrower (or such Subsidiary) (each, a "Restoration Account"), and until disbursed by in accordance herewith, shall constitute additional security for the Secured Obligations under the Loan Documents. The Borrower shall deliver monthly reports with respect to any Restoration Accounts in accordance with Section 8.4(e). Any funds remaining in a Restoration Account upon the completion of the related repair or restoration shall be forthwith paid over to the Collateral Trustee in accordance with Section 7.5(b), to be applied by DOE in accordance with Section 7.5(e) below.

(d) Upon the occurrence of any other Event of Loss, disbursement of the Net Cash Proceeds by the Collateral Trustee to the Borrower shall be permitted if, and only if, (i) DOE shall have determined that (A) repair or replacement of the relevant portion of the Project or other property lost or damaged is technically and economically feasible and (B) the Borrower is in compliance with such other conditions and requirements as DOE shall consider appropriate in the circumstances and (ii) the Borrower delivers a Reinvestment Notice with respect to such Net Cash Proceeds to DOE. Disbursements to the Borrower under this Section 7.5(d) shall be made from time to time in accordance with disbursement procedures required by DOE and the Collateral Trustee.

(e) All Net Cash Proceeds relating to an Event of Loss not otherwise applied in accordance with Section 7.5(c) or (d) or by any applicable Reinvestment Prepayment Date shall be applied by DOE to the prepayment of the Loans in accordance with Section 3.6.

7.6 Additional Subsidiaries and Collateral; Further Assurances.

(a) Except as provided in Section 7.6(b) with respect to certain Foreign Subsidiaries, all Subsidiaries of the Borrower (whether now existing or hereafter created or acquired) shall become Guarantors either pursuant to Section 5.1(a)(iii), to the extent applicable, or this Section 7.6. If the Borrower or any of its Subsidiaries shall at any time after the Principal Instrument Delivery Date (and otherwise in accordance with the terms and provisions of this Agreement) create or acquire any new Subsidiary, the

Borrower shall so notify DOE in writing. With respect to each Subsidiary required to become a Guarantor pursuant to this Section 7.6 (each, an "Additional Guarantor"), the Borrower shall, and shall cause its applicable Subsidiaries to, at the Borrower's expense, promptly (but in any event within ten (10) Business Days or such longer period as DOE may agree to in writing after so becoming required), do all of the following:

(i) execute and deliver to DOE and the Collateral Trustee a Collateral Supplement executed by the owner of the Capital Stock of such Subsidiary or such other documentation as DOE or the Collateral Trustee reasonably deems necessary or advisable to grant a First Priority security interest in 100% of the Capital Stock of such Subsidiary;

(ii) deliver to the Collateral Trustee the certificates representing such Capital Stock, if any, together with undated stock powers, in blank, executed and delivered by a Responsible Officer of the relevant holder;

(iii) cause such Subsidiary to become a party to the Guarantee, the Security Agreement, the Collateral Trust Agreement and the Subordination Agreement and each other Loan Document to which all Guarantors are parties by executing and delivering to DOE and the Collateral Trustee (A) a Subsidiary Joinder Agreement (or, in the case of the first date on which any Subsidiaries become Guarantors, by executing and delivering the Guarantee and the Subordination Agreement in addition to a Subsidiary Joinder Agreement with respect to the Security Agreement, the Collateral Trust Agreement and any other applicable Loan Document) and (B) a Collateral Supplement reflecting all assets of the types referenced in the Collateral Schedules that are owned by such Subsidiary;

(iv) take such actions necessary or advisable to grant a First Priority security interest in all Collateral owned by such Subsidiary in favor of the Collateral Trustee;

(v) deliver to DOE all such documents, instruments, agreements and certificates as are similar to those described in Sections 5.1(d) and 5.1(h); and

(vi) deliver to DOE and the Collateral Trustee legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to DOE and the Collateral Trustee.

(b) No Foreign Subsidiary shall be required to become a Guarantor (i) if becoming a Guarantor would be illegal under the law of such Foreign Subsidiary's jurisdiction of formation or the jurisdiction where it operates or if becoming a Guarantor would subject any employee, officer or director of such Foreign Subsidiary to personal liability that results solely from such Foreign Subsidiary becoming a Guarantor (other than any immaterial liability as to which such employee, officer or director is indemnified

by such Foreign Subsidiary), or (ii) unless and to the extent requested by DOE from time to time with respect to any Foreign Subsidiary (whether now existing or hereafter created or acquired) the value of which DOE determines at such time to be material to the interests of DOE and FFB as lender. In determining whether to require a Foreign Subsidiary to become a Guarantor at any time, DOE will consider in good faith whether it believes at such time that the incremental costs, including incremental tax costs, if any, of doing so are not likely to be excessive in relation to the value of the security to be afforded thereby. The Borrower shall cooperate with DOE in providing information sufficient to enable DOE to make any such determination. Promptly upon such request of DOE with respect to any Foreign Subsidiary if clause (i) of the first sentence of this Section 7.6(b) is not applicable, the Borrower shall, at the Borrower's expense, cause all the actions described in Section 7.6(a) to be taken by or with respect to such Foreign Subsidiary. In addition, in the case of any First-Tier Foreign Subsidiary (whether now existing or hereafter acquired) which is not so required to become a Guarantor, the Borrower shall, and shall cause its applicable Subsidiaries to, at the Borrower's expense, promptly (but in any event within twenty (20) Business Days or such longer period as DOE may agree to in writing) do all of the following:

(i) execute and deliver a Collateral Supplement or such other documentation as DOE or the Collateral Trustee reasonably deems necessary or advisable to grant a First Priority security interest in that portion of the Capital Stock of such Foreign Subsidiary that is required to be included in the Collateral pursuant to Section 7.6(e)(ii);

(ii) deliver to the Collateral Trustee the certificates representing such Capital Stock, if any, together with undated stock powers, in blank, executed and delivered by a Responsible Officer of the relevant holder; and

(iii) deliver to DOE and the Collateral Trustee legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to DOE and the Collateral Trustee.

The grant of the First Priority security interest referred to in the preceding sentence with respect to the Capital Stock of any Foreign Subsidiary that is not required to be a Guarantor shall be made under U.S. law and, if and to the extent request by DOE from time to time, under applicable foreign law in the case of any Foreign Subsidiary the value of which DOE determines at such time to be material to the interests of DOE and FFB as lender.

(c) If the Borrower or any of its Subsidiaries shall at any time acquire any After Acquired Material Real Property, the Borrower shall, and shall cause the applicable Subsidiaries to, immediately deliver notice thereof to DOE in the form of a Collateral Supplement, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon, the nature of the business to be conducted thereat and the approximate fair market value of the Collateral to be located thereon. At any time thereafter, DOE may notify the Borrower

(and any applicable Subsidiaries that are or are required by DOE to become Guarantors), if DOE intends to require a Mortgage on such After Acquired Material Real Property, and upon receipt of such notice, the Person which has acquired such interest in the After Acquired Material Real Property shall promptly (but in any event within thirty (30) days) furnish to DOE, at the Borrower's expense all of the following:

(i) a Mortgage with respect to such real property and related assets located at the After Acquired Material Real Property, duly executed by the Borrower and/or its applicable Subsidiaries and in recordable form;

(ii) evidence of the recording of the Mortgage referred to in clause (i) above in such office or offices as may be necessary or, in the opinion of DOE, desirable to create and perfect a valid and enforceable First Priority Lien; and

(iii) such title insurance policies, surveys, lien searches, landlord estoppel agreements, easements, fixture filings, certificates, legal opinions and other deliverables of the type referred to in Section 5.4 as DOE may reasonably request with respect to such After Acquired Material Real Property and the Mortgage thereon;

provided, that in no event shall the Borrower or any Guarantor be required to deliver a Mortgage pursuant to this Section 7.6(c) with respect to, and the Collateral shall not include, any leasehold interest relating solely to retail stores or distribution facilities.

(d) The Borrower shall include information in the Collateral Schedules and each Collateral Supplement sufficient to identify each leased or third party location at which the aggregate value of the inventory, equipment and other assets of the Obligors at such location at any time exceeds (i) if such location is in the United States, $1,000,000, or (ii) if such location is outside the United States, $5,000,000. The Borrower shall use commercially reasonable efforts to cause to be executed and delivered to the Collateral Trustee, at the Borrower's expense, a Collateral Access Agreement with respect to each leased or third party location of Collateral (whether now existing or hereafter acquired) at which the aggregate value of the inventory, equipment and other assets of the Obligors at such location at any time exceeds (i) if such location is in the United States, $5,000,000 (except that, upon reasonable notice to the Borrower, DOE shall have the right to request a Collateral Access Agreement with respect to any such location in the United States if such value exceeds $1,000,000), or (ii) if such location is outside the United States, $10,000,000 (except that, upon reasonable notice to the Borrower, DOE shall have the right to request a Collateral Access Agreement with respect to any such location outside the United States if such value exceeds $5,000,000); *provided*, that no Collateral Access Agreement shall be required from Elite Logistics for the warehouse location located at 26261 Research Place, Hayward, California or from the landlord for the leased location at 1050 Bing Street, San Carlos, California, if (x) all property of the Obligors is removed from such locations and transferred to a property owned by the Borrower or otherwise subject to a Collateral Access Agreement within three (3) months of the Principal Instrument Delivery Date (or such longer period as DOE may agree to in writing) and (y)

the Borrower shall make all rental and other payments due and payable under such leases when due.

(e) The Borrower shall, and shall cause each of the Guarantors to, at the Borrower's expense, promptly take all other actions that have been or shall be requested by DOE, or that the Borrower knows or reasonably should have known are necessary to create, maintain, protect, perfect and continue the perfection of the First Priority security interests of the Collateral Trustee for the benefit of the Secured Parties in the following property (all of which shall be included in the Collateral), except to the extent it constitutes Excluded Property, and shall furnish timely notice of the necessity of any such action, together with such instruments, in execution form, and such other information as may be required to enable any appropriate Secured Party to effect any such action.

(i) all assets financed or acquired with (or the cost of which is reimbursed to the Borrower with) the proceeds of the Loans and the Borrower Commitments;

(ii) (w) all Capital Stock of each Domestic Subsidiary; (x) all Capital Stock of each Foreign Subsidiary that is a Guarantor; (y) with respect to each First-Tier Foreign Subsidiary that is a "controlled foreign corporation" (as defined in section 957 of the Code) but is not a Guarantor, 65% of all Capital Stock of such Subsidiary entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)) and 100% of all other Capital Stock of such Subsidiary; *provided* that immediately upon any amendment of the Code that allows the pledge of a greater percentage of voting Capital Stock without adverse tax consequences, the Collateral shall include such greater percentage of Capital Stock of each Subsidiary referred to in this clause (y); and (z) all Capital Stock of each other First-Tier Foreign Subsidiary;

(iii) all Intellectual Property, technical data including software, licenses, general intangibles and goodwill of the Obligors;

(iv) all fee real property interests of the Obligors, all leasehold real property interests relating to the Projects, any other future leasehold real property interests that DOE determines are material to the interests of DOE and FFB as lender and all related fixtures, easements, rights-of-way and licenses; *provided* that the Collateral shall not include leasehold interests existing on the date of this Agreement and described in Schedule B-1 to the Information Certificate (other than as required by Section 5.4(c) with respect to the Site for Project S), any leases relating solely to retail stores or distribution facilities or any other fee interests or leases acquired after the date hereof other than as required by Section 7.6(c);

(v) all equipment, inventory, receivables, investment property, insurance policies, deposit accounts, contract rights, books and records and all other property of the Obligors; and

(vi) all proceeds of the foregoing.

For the avoidance of doubt, it is understood that all of the assets described in clauses (ii) through (vi) of this Section 7.6 shall be included in the Collateral whether or not financed or acquired with the proceeds of the Loans and the Borrower Commitments. The Borrower shall include information in the Collateral Schedules and each Collateral Supplement that reasonably identifies any material Excluded Property (except for any Excluded Property described in clause (a) of the definition thereof the loss of which could not reasonably be expected to have a Material Adverse Effect).

(f) Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of the Guarantors to, at the Borrower's expense, promptly (i) execute or cause to be executed and shall file or cause to be filed or register or cause to be registered such financing statements, grants of security interest, continuation statements and, if requested by DOE, fixture filings and mortgages or deeds of trust, in all places necessary to establish, maintain and perfect such security interests and in all other places that DOE shall reasonably request and such other documents as shall be necessary and appropriate to protect the interests of the Secured Parties in the Collateral in the case of any Default or Event of Default, including ensuring availability (and delivery in the case of technical data including software and any other applicable assets) of all Intellectual Property rights, technical data including software, other books and records, real property, physical assets and all other rights necessary for any Person, including DOE, to complete, operate, convey and dispose of any part of the Collateral, (ii) discharge all other Liens (other than Permitted Liens) or other claims adversely affecting the rights of the Secured Parties in the Collateral, (iii) with respect to receivables from or other commercial contract rights or claims against any Governmental Authorities in an aggregate amount in excess of $1,000,000 at any time outstanding (collectively, the "Applicable Governmental Claims"), (A) notify DOE and the Collateral Trustee thereof by delivery of a Collateral Supplement describing such Applicable Governmental Claims and (B) take all steps required under applicable Requirements of Law to permit the Lien created pursuant to the Security Documents therein to be recognized by such Governmental Authorities and to have such Applicable Governmental Claims assigned to the Collateral Trustee and to be effective to cause such Governmental Authorities to be obligated to make payments under such Applicable Governmental Claims directly to the Collateral Trustee as assignee if the Collateral Trustee so elects at any time while an Event of Default has occurred and is continuing, and (iv) deliver or publish all notices to third parties that may be required to establish or maintain the validity, perfection or priority of any Lien created pursuant to the Security Documents. In furtherance of the foregoing, the Borrower hereby authorizes, and shall direct each of its Subsidiaries to authorize, DOE or the Collateral Trustee to file or cause to be filed or register or cause to be registered any such financing statements, grants of security interest, continuation statements, fixture filings and mortgages or deeds of trust on its behalf. Furthermore, the Borrower shall, and shall cause each of its Subsidiaries to, cause to be delivered promptly to DOE at Borrower's expense such opinions of counsel and other related documents as may be reasonably requested by DOE to assure compliance with this Section 7.6. Additionally, when requested by DOE, the Borrower shall cause any Person party to a Project Document executed subsequent to the Principal Instrument

Delivery Date to enter into a direct agreement with DOE in form and substance satisfactory to DOE. The Borrower will also pay all reasonable fees, costs and expenses of and incurred in connection with the Collateral Trustee.

(g) The Borrower will furnish to DOE written notice at least thirty (30) days prior to the occurrence of any change (i) in any Obligor's name, type of organization or jurisdiction of organization, (ii) in any Obligor's identity or corporate structure, or (iii) in any Obligor's Federal Taxpayer Identification Number, if any. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Trustee to continue at all times following such change to have a valid, legal and perfected First Priority security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected First Priority security interest as contemplated in the Security Documents. Upon the effective date of any such change, the Borrower shall deliver to DOE and the Collateral Trustee a completed Collateral Supplement reflecting an updated Organizational Information Schedule.

7.7 Diligent Construction of Project and Operations. The Borrower shall (a) use commercially reasonable best efforts to construct each Project diligently, substantially in accordance with the applicable Governmental Approvals and the Business Plan; (b) complete each Project through Final Completion no later than the Specified Completion Date, without extension for any Event of Force Majeure; and (c) conduct the operations of each Project and the Collateral in accordance with the Business Plan and on the basis of customary commercial practice and arm's-length arrangements.

7.8 Title; Rights to Land. The Borrower shall preserve and maintain good and marketable title to the assets constituting the Projects and such rights to use the Sites as are necessary to construct, operate and maintain the Projects in accordance with the requirements of the Transaction Documents, the Business Plan and the Project Budget.

7.9 Project Documents.

(a) Prior to the end of the Availability Period, the Borrower shall give DOE reasonable advance notice before entering into (i) any lease for either Project (each, together with the Deer Creek Lease, the "Project Leases"), (ii) any material agreement relating to the Borrower's (or any Subsidiary's) relationship with Daimler with respect to manufacturing any A-class vehicle or (iii) any material agreement with Daimler relating to any other material operations in the United States that (x) are outside the scope of Project P and Project S and (y) require an investment by the Borrower (and its Subsidiaries) in excess of $75,000,000 (each such agreement, together with the Project Leases, the "Project Documents"). The terms of each Project Document that relate to DOE's security interest therein must be on terms satisfactory to DOE in its sole discretion. In addition, with respect to the other terms of such Project Document, the Borrower shall not enter into such Project Document unless DOE shall have had a reasonable period within which to object to such other terms and such objections, if any, shall have been addressed to DOE's reasonable satisfaction.

(b) The Borrower shall (i) maintain all the Project Leases in full force and effect, (ii) comply with the provisions thereof in all material respects and (iii) diligently pursue all of its rights and remedies thereunder in all material respects. The Borrower shall, and shall cause each of its Subsidiaries to, comply with the provisions of the other Project Documents to which it is a party, except to the extent that noncompliance, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The Borrower shall, and shall cause each of its Subsidiaries to, diligently pursue all of its rights and remedies under the other Project Documents to the extent the Borrower reasonably determines it to be in its best business interests to do so.

7.10 Performance of Obligations. The Borrower shall, and shall cause each of its Subsidiaries to, pay, discharge, perform or otherwise satisfy when due or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower.

7.11 Use of Proceeds. The Borrower shall use the proceeds of each Advance in accordance with Section 2.4(d) and the other terms and conditions of all applicable Loan Documents (including Sections 9.10 and 9.21). Neither DOE nor FFB shall have any responsibility as to the use of any proceeds of any Advance.

7.12 Books, Records and Inspections.

(a) The Borrower shall, and shall cause each of its Subsidiaries to, keep proper records and books of account in which entries are correct and accurate in all material respects and are sufficient to prepare financial statements in accordance with GAAP and facilitate the effective and accurate audit and performance evaluation of the Projects pursuant to the Applicable Regulations and Program Requirements. The Borrower shall, and shall cause each of its Subsidiaries to, maintain adequate management information and cost control systems.

(b) The Borrower shall, and shall cause each of its Subsidiaries to, consult and cooperate with the Lender Parties regarding each of the Projects upon their request and shall permit officers and designated representatives of any Lender Party or the United States Comptroller General to visit and inspect any Project and any other facilities and properties of the Borrower or its Subsidiaries and any pertinent books, documents, papers and records of the Borrower or its Subsidiaries for the purpose of audit, examination, inspection and monitoring upon at any reasonable time during normal business hours, and to examine and discuss the affairs, finances and accounts of the Borrower and its Subsidiaries with the officers of the Borrower. The Borrower shall, and shall cause each of its Subsidiaries to, afford proper facilities for such inspection, shall make copies (at the Borrower's expense) of any records that are subject to such inspection, shall make available all information related to the Borrower, its Subsidiaries, the Collateral and each Project, including Intellectual Property owned, licensed or controlled by the Borrower and its Subsidiaries and utilized in the construction, startup or

operation of the Projects, and shall permit the taking of samples as may be reasonably necessary in order to determine the technical progress, soundness of financial condition, management stability, compliance with environmental requirements, adequacy of health and safety conditions, and all other matters with respect to the Borrower, its Subsidiaries, the Collateral and each Project.

(c) The Borrower shall, and shall cause each of its Subsidiaries to, authorize the Borrower's Independent Auditor to communicate directly with the Lender Parties and the United States Comptroller General at any time regarding any Agreed-Upon Procedures Report and the Borrower's accounts and operations.

(d) In the event that the Borrower's Independent Auditor should cease to be the accountants of the Borrower for any reason, the Borrower shall appoint and maintain as the Borrower's Independent Auditor another firm of independent public accountants, subject to the approval of DOE (such approval not to be unreasonably withheld.

(e) The Borrower shall, and shall cause each of its Subsidiaries to, retain all records relating to expenditures with respect to which Advances were made for five (5) years after the Advances were made with respect to such expenditure.

7.13 Compliance with Requirements of Law. The Borrower shall, and shall cause each of its Subsidiaries to:

(a) comply with, and conduct its business, operations, assets, equipment, property, leaseholds, and other facilities in compliance with, in all material respects (i) all Environmental Laws and (ii) all other Requirements of Law, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and

(b) procure, maintain and comply with all Governmental Approvals required for the ownership, construction, financing, maintenance or operation of the Projects or any part thereof at or prior to such time as such Governmental Approval is required or necessary, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

7.14 Compliance with Program Requirements. In addition to the Borrower's obligations hereunder, the Borrower shall, and shall cause each of its Subsidiaries to, comply with all Program Requirements in connection with each of the Projects.

7.15 Environmental and Safety Audit. Not less frequently than once each calendar year, the Borrower shall conduct an environmental and safety compliance audit of each Project in a manner satisfactory to DOE, in its sole discretion, including an analysis of whether each Project is in compliance with all Requirements of Law, Program Requirements, Project Documents and Environmental Laws and each such audit shall result in the prompt preparation of a written report with respect thereto which shall be delivered to DOE for review and approval by DOE. The Borrower shall provide for the prompt correction of any deficiencies identified in

such audit and for the operation and maintenance of the Projects in accordance with any recommendations set forth therein.

7.16 Taxes; Claims. The Borrower shall, and shall cause each of its Subsidiaries to, pay or arrange for the payment before they become overdue all income and other taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; *provided*, no such tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such tax or claim. The Borrower shall not, and shall not permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Borrower or any of its Subsidiaries).

7.17 Patriot Act Information. The Borrower shall, and shall cause each of its Subsidiaries to, provide DOE any information requested by the DOE under or in connection with the USA Patriot Act.

7.18 Davis-Bacon Act. The Borrower shall ensure that all laborers and mechanics employed by contractors or subcontractors during construction, alteration or repair that is financed, in whole or in part, by a loan under 42 U.S.C. Sec. 17013 shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40, United States Code.

7.19 ERISA Covenants.

(a) The Borrower shall do, and shall cause each of its ERISA Affiliates to do, each of the following: (i) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (ii) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Code; (iii) make all required contributions under each Multiemployer Plan; and (iv) ensure that all liabilities under each Plan are either (A) funded to at least the minimum level required by applicable Requirements of Law or, if higher, to the level required by the terms governing such Plan, (B) insured with a reputable insurance company; or (C) provided for or recognized in the Financial Statements most recently delivered to DOE under Section 8.1).

(b) The Borrower shall not, nor shall it permit any ERISA Affiliate to, permit to exist any ERISA Event.

7.20 Investment Earnings. The Borrower shall return to DOE any earnings from any Investment realized by the Borrower in connection with the Borrower's temporary use of the proceeds of any Advance under Section 2.4(d)(v) or Section 2.12 to the extent such earnings exceed the accrued interest expense due and payable by the Borrower pursuant to the Loan Documents.

7.21 Advanced Technology Vehicles. The Borrower shall, in accordance with the Application and the Business Plan, develop, manufacture, assemble and introduce advanced technology vehicles and qualifying components (each as defined in the Applicable Regulations).

7.22 OFAC. At all times throughout the term of this Agreement, each Obligor and its respective Affiliates over which it exercises management control (a) shall be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC and (b) shall not permit any Collateral to be maintained, insured, traded, or used (directly or indirectly) in violation of any United States statutes, rules or regulations, in a Prohibited Jurisdiction or by a Prohibited Person, and no lessee or sublessee shall be a Prohibited Person or organized in a Prohibited Jurisdiction.

7.23 Post-Closing Covenant. On or prior to February 19, 2010, the Borrower shall deliver to DOE a certificate of a Responsible Officer attaching evidence of the filing with the Secretary of State of the State of Delaware of a clarifying amendment to the Certificate of Incorporation of the Borrower with respect to the final date of this Agreement.

ARTICLE VIII

INFORMATION COVENANTS

The Borrower hereby agrees that until the date all of the Note P Obligations and the Note S Obligations have been paid in full (other than unasserted contingent indemnity obligations under Section 12.8) and the Loan Commitment Amounts have been reduced to zero:

8.1 Financial Statements. At its own expense, the Borrower shall furnish or cause to be furnished to DOE, by an Acceptable Delivery Method, and if requested by FFB or DOE on behalf of FFB, to FFB by facsimile, with a reproduction of the signatures where required, the following items:

(a) Monthly Financial Statements. As soon as available, but in any event within thirty (30) days after the end of each month:

(i) unaudited consolidated Financial Statements of the Borrower and its Subsidiaries for such month; and

(ii) the Compliance Certificate required by Section 8.1(d).

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each fiscal quarter (including the fourth (4th) fiscal quarter) of each Fiscal Year:

(i) unaudited consolidated Financial Statements of the Borrower and its Subsidiaries for such quarter;

(ii) unaudited consolidating Financial Statements of the Borrower and its Subsidiaries for such quarter or, if such consolidating Financial Statements are not normally prepared by the Borrower at such time, copies of the unaudited worksheets used by the Borrower in the preparation of the consolidated Financial Statements referred to in clause (i) above which show information substantially similar to that which would normally be contained in consolidating Financial Statements for such quarter with respect to the Borrower and each material Subsidiary of the Borrower and with respect to all Non-Guarantor Subsidiaries of the Borrower (with the latter shown either individually or as a group as the Borrower may elect); and

(iii) the Compliance Certificate required by Section 8.1(d).

(c) Annual Financial Statements. As soon as available, but in any event (x) prior to an IPO, within one hundred twenty (120) days after the end of each Fiscal Year and (y) following an IPO, within ninety (90) days after the end of each Fiscal Year:

(i) audited consolidated Financial Statements of the Borrower and its Subsidiaries for such Fiscal Year;

(ii) unaudited consolidating Financial Statements of the Borrower and its Subsidiaries for such Fiscal Year or, if such consolidating Financial Statements are not normally prepared by the Borrower at such time, copies of the unaudited worksheets used by the Borrower in the preparation of the consolidated Financial Statements referred to in clause (i) above which show information substantially similar to that which would normally be contained in consolidating Financial Statements for such Fiscal Year with respect to the Borrower and each material Subsidiary of the Borrower and with respect to all Non-Guarantor Subsidiaries of the Borrower (with the latter shown either individually or as a group as the Borrower may elect);

(iii) the Compliance Certificate required by Section 8.1(d);

(iv) a report on such consolidated Financial Statements of the Borrower's Independent Auditor, which report shall (A) be unqualified as to going concern and scope of audit, (B) contain a statement to the effect that such Financial Statements fairly present, in all material respects, the consolidated financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the period indicated in conformity with GAAP and (C) state that the examination by such Independent Auditor in connection with such Financial Statements has been made in accordance with generally accepted auditing standards;

(v) the management representation letter delivered by the Borrower to its Independent Auditor and the management letter if issued delivered to the Borrower by its Independent Auditor, including (if issued) a report on the effectiveness of the Borrower's internal control over financial reporting; and

(vi) a written statement of the Borrower's Independent Auditor stating that no condition or event has come to their attention that causes them to believe that a breach of any of the covenants set forth on Annex 9.1 had or has occurred or if, such a condition or event has come to their attention, a statement as to the nature and period of existence thereof.

(d) Compliance Certificates. Concurrently with any delivery of Financial Statements pursuant to Sections 8.1(a), (b) or (c), a certificate (a "Compliance Certificate") of a Responsible Officer of the Borrower substantially in the form of the document titled "Compliance Certificate" included in the Forms Supplement, which certificate shall:

(i) certify that such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in conformity with GAAP applied on a basis consistent with prior years, subject, in the case of unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments;

(ii) certify that no Default or Event of Default had or has occurred, or if such certification cannot be made, the nature and period of existence of such Default or Event of Default and what corrective action the Borrower has taken or proposes to take with respect thereto;

(iii) set forth computations in reasonable detail satisfactory to DOE demonstrating whether or not the Borrower is in compliance with the covenants set forth in Annex 9.1 to the extent such covenants are applicable to any period included within such Financial Statements;

(iv) set forth the applicable Excess Equity Proceeds Amount as of the first day of the period included within such Financial Statements, as of the last day of such period and the difference between such amounts, together with a summary of the Investment Amount, Cash Investment Amount, consideration and legal structure of each Permitted Equity Proceeds Investment made during such period; and

(v) in the case of the Compliance Certificate delivered concurrently with the annual Financial Statements pursuant to Section 8.1(c):

(A) either (x) confirm that there has been no material change in the information set forth in the Collateral Schedules since the

later of the Principal Instrument Delivery Date and the date of the most recent certificate delivered pursuant to this Section (except to the extent set forth in one or more Collateral Supplements previously executed and delivered to DOE and the Collateral Trustee) or (y) identify such changes by executing and delivering to DOE and the Collateral Trustee a completed Collateral Supplement reflecting such changes;

(B) certify that all Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations required to be made under the Loan Documents, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Organizational Information Schedule or pursuant to clause (A) above to the extent necessary to protect and perfect the security interests under the Security Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period); and

(C) outline all material insurance coverage maintained as of the date of such Compliance Certificate by the Borrower and its Subsidiaries and all material insurance coverage planned to be maintained by the Borrower and its Subsidiaries in the immediately succeeding Fiscal Year.

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in GAAP or any of the policies, procedures or methodologies used in the application thereof from those used in the preparation of the Historical Financial Statements (but without limiting the Borrower's obligation to comply with the restrictions on making such changes set forth in Section 9.15), the consolidated Financial Statements of Borrower and its Subsidiaries delivered pursuant to Section 8.1(b) or (c) will differ in any material respect from the consolidated Financial Statements that would have been delivered pursuant to such subdivisions had no such change been made, then the Borrower will (i) notify DOE in writing of such change promptly after the Borrower obtains knowledge thereof and (ii) promptly after the request of DOE, deliver to DOE one or more statements of reconciliation for all such prior Financial Statements delivered with respect to the period or periods of time affected by such change, not to exceed the four (4) fiscal quarters preceding the fiscal quarter during which such change occurred, in form and substance reasonably satisfactory to DOE.

(f) Additional Audit Reports. As soon as available, but in any event within ten (10) Business Days after the receipt thereof by the Borrower, copies of all other annual or interim audit reports and management letters submitted to the Borrower by the Borrower's Independent Auditor.

8.2 Reports. At its own expense, the Borrower shall furnish or cause to be furnished to DOE, by an Acceptable Delivery Method, and if requested by FFB or DOE on

behalf of FFB, to FFB by facsimile, with a reproduction of the signatures where required, the following items:

(a) Quarterly Progress Report. On the 15th day of each February, May, August and November (each, a "Quarterly Reporting Date"), a quarterly progress report for each Project, in a form to be agreed that is satisfactory to DOE, setting forth a narrative analysis of the current and expected future status of each Project relative to the Milestones for such Project and the other goals for each Project contemplated by the Business Plan.

(b) Revised Business Plan Information. On or prior to each Quarterly Reporting Date, an updated version of the information described in Section 5.1(m) (other than the Project Budgets, with respect to which Borrower will instead deliver updated Project Forecasts on such Quarterly Reporting Date which shall be substantially in the form of the document titled "Sample Project Forecast and Overrun Calculation" included in the Forms Supplement); provided that if the Borrower shall prepare and deliver to its board of directors any updated forecasts other than those otherwise required under this Agreement, the Borrower will deliver such updated forecasts to DOE (and FFB, as applicable) within ten (10) Business Days of the date the Borrower delivers such updated forecasts to its board of directors; *provided further* that no updated information described in this Section 8.2(b) shall be considered part of any "Business Plan" hereunder unless and until it has been approved by DOE in its sole discretion.

(c) Agreed-Upon Procedures Report. Within forty-five (45) days following the Principal Instrument Delivery Date and on or prior to each Quarterly Reporting Date thereafter, a report with respect to agreed-upon procedures (an "Agreed-Upon Procedures Report"), prepared by the Borrower's Independent Auditor, in a form to be agreed that is satisfactory to DOE.

(d) Environmental Report. In addition to the annual environmental and safety audit report required by Section 7.15, within thirty (30) days after the close of each Fiscal Year, a report, satisfactory to DOE in its sole discretion, summarizing the environmental performance of the Projects over the preceding year, with sufficient information (as determined by DOE) to allow the DOE to monitor the Projects' performance with respect to the environment and their compliance with Environmental Laws and including a narrative summary of (i) the results of any environmental monitoring or sampling activity, (ii) any environmental deficiencies identified by any Governmental Authority or by the audit required by Section 7.15 and any remedial action taken with respect thereto, and (iii) information on consumption and output of energy and raw material by the Projects.

8.3 Notices. Promptly, but in any event within five (5) Business Days, after the Borrower or any of its Subsidiaries obtains Knowledge thereof or information pertaining thereto, the Borrower, at its own expense, shall furnish or cause to be furnished to DOE, by an Acceptable Delivery Method, and if requested by FFB or DOE on behalf of FFB, to FFB by facsimile, with a reproduction of the signatures where required, written notice of the following items:

(a) any event that constitutes a Default or Event of Default, specifying the nature thereof, together with a certificate of a Responsible Officer of the Borrower indicating the steps the Borrower has taken or proposes to take to remedy the same;

(b) any Adverse Proceeding pending or threatened in writing against or affecting the Borrower, any of its Subsidiaries, any of their respective property or any other third party, in each case, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or that seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or that arises in respect of any material Indebtedness of the Borrower or its Subsidiaries or alleges any criminal misconduct by any of them, and any material developments with respect to any of the foregoing;

(c) any change in the Responsible Officers of the Borrower, including certified specimen signatures of any new Person so appointed and satisfactory evidence of the authority of such Person, or any change in the Borrower's Independent Auditor and the reason therefor;

(d) any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment, supplement, modification, waiver or indulgence or breach (i) of any Project Document in any material respect or (ii) of any Governmental Approval or Required Consent in any respect which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(e) any Lien (other than a Permitted Lien) being granted or established or becoming enforceable over any of the Borrower's or any of its Subsidiaries' assets;

(f) any Event of Loss;

(g) any one or more events, conditions or circumstances that exist or have occurred or in the judgment of the Borrower are expected as imminent that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(h) any event, occurrence or circumstance that renders or is likely to render the Borrower incapable of, or prevents the Borrower from meeting any Milestone or performing any other obligation of the Borrower under any Transaction Document;

(i) any Event of Force Majeure affecting, or that either the Borrower, its Subsidiaries or any other third party claims would affect, the performance by such Person of any obligation under any Transaction Document;

(j) any material transaction with any Affiliate of the Borrower (other than a transaction solely among Obligors) or any other material change in the information with respect to Capital Stock issued by the Borrower referred to in Section 6.3(a)(ii) and (b) that occurs as part of an Equity Offering;

(k) any information that representations made with respect to Debarment Regulations were erroneous when made or have become erroneous by reason of changed circumstances;

(l) an ERISA Event;

(m) any event related to the Projects or the business of the Borrower and its Subsidiaries in material violation of Environmental Laws or the Project Documents or having a material impact on the environment or on human health (including any accident resulting in the loss of life), and a report describing such accident, the impact of such event and the remedial efforts required and (as and when taken) implemented with respect thereto; and

(n) any Environmental Claim or any assertion of an Environmental Claim or claims involving an amount in excess of $250,000 individually or $1,000,000 in the aggregate by any other Person or Persons together with a copy of any correspondence relating thereto and a description of any steps the Borrower or such Subsidiary is taking and proposes to take with respect thereto.

8.4 Other Information. At its own expense, the Borrower shall furnish or cause to be furnished to DOE, by an Acceptable Delivery Method, and if requested by FFB or DOE on behalf of FFB, to FFB by facsimile, with a reproduction of the signatures where required, the following items:

(a) any notices or other communications with respect to Intellectual Property, Required Insurance, Subsidiaries or Collateral required to be delivered to DOE or the Collateral Trustee pursuant to Sections 7.3, 7.4 or 7.6 or the applicable Security Document;

(b) promptly upon request, but in no event later than five (5) Business Days following any request of DOE (or such later date as DOE may agree), updated information with respect to the assets of the Borrower and its Subsidiaries of the type referred to in 10 C.F.R. 611.101(k);

(c) promptly upon request, but in no event later than five (5) Business Days following any request of DOE (or such later date as DOE may agree), a Collateral Supplement containing updated Collateral Schedules;

(d) subject to reasonable measures implemented to ensure confidentiality of information provided, consistent with FOIA, the Program Requirements and other applicable Requirements of Law, cooperation with DOE requests for continuing due diligence reviews with respect to the Borrower and its Subsidiaries, the Collateral and any aspect relating to the Projects, including DOE requests for reports on the technical and financial performance of the Project-related manufacturing facilities, the Model S and the battery packs, motors and components to be produced by Project P;

(e) within five (5) business days after the end of each calendar month while any Net Cash Proceeds of an Event of Loss remain in any Restoration Account, a

report setting forth disbursements of any such Net Cash Proceeds during the immediately preceding month pursuant to Section 7.5(c), together with evidence of the application of such Net Cash Proceeds and such other information or documentation as DOE may reasonably request; and

(f) promptly upon request, but in no event later than five (5) Business Days following any request of DOE (or such later date as DOE may agree) such other information or documents as DOE may reasonably request.

ARTICLE IX

NEGATIVE COVENANTS

The Borrower hereby agrees that until the date all of the Note P Obligations and the Note S Obligations have been paid in full (other than any unasserted contingent indemnity obligations under Section 12.8) and the Loan Commitment Amounts have been reduced to zero:

9.1 Financial Covenants. The Borrower shall comply with each of the covenants set forth on Annex 9.1 hereto.

9.2 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, incur, create, guarantee, assume, permit to exist or otherwise become liable for any Indebtedness, except the following (collectively, "Permitted Indebtedness"):

(a) Indebtedness in respect of the Secured Obligations incurred under the Loan Documents;

(b) Indebtedness existing on the Principal Instrument Delivery Date set forth on Schedule D-4 to the Information Certificate;

(c) Capital Lease Obligations and purchase money Indebtedness, in each case incurred by the Borrower or any Subsidiary to finance the acquisition of equipment (and any refinancings, renewals or extensions thereof), in an aggregate amount outstanding at any time which, together with the aggregate outstanding amount of Indebtedness in respect of equipment leases and equipment loans set forth on the schedule referred to in clause (b) above (and any refinancings, renewals or extensions thereof), shall not be in excess of $25,000,000; provided that any such Indebtedness (i) shall be secured only by the asset acquired (and any accessions thereto and proceeds thereof) in connection with the incurrence of such Indebtedness as permitted by Section 9.3(h), and (ii) shall not exceed an amount equal to 100% of the aggregate consideration paid to acquire such asset;

(d) unsecured Indebtedness (i) of the Borrower to any Guarantor, (ii) of any Subsidiary to the Borrower or any Guarantor (but subject to the limitations of Section 9.4(f) in the case of any such Indebtedness of any Foreign Subsidiary), or (iii) of any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary; provided that in the case of clauses (i) and (ii), all such Indebtedness shall be (x) subject to a First Priority

Lien pursuant to the Security Agreement and, if requested by DOE, evidenced by promissory notes which shall be delivered to the Collateral Trustee and (y) subordinated in right of payment to the payment in full of the Secured Obligations pursuant to the terms of the Subordination Agreement (it being understood that in the case of clause (ii) above, Indebtedness of Non-Guarantor Subsidiaries to the Borrower or any Guarantor shall not be required to be subordinated pursuant to this clause (y));

(e) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or from the endorsement of instruments for collection in the ordinary course of business; provided that any such Indebtedness shall not be secured by any Liens except to the extent permitted by Section 9.3(i);

(f) Indebtedness in respect of Hedging Transactions permitted by Section 9.19;

(g) Indebtedness in respect of statutory obligations, surety bonds, appeal bonds, indemnity bonds, performance bonds or other similar bonds in the ordinary course of business;

(h) guarantees by the Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Subsidiary (but subject to the limitations of Section 9.4(f) in the case of any such guarantees of Indebtedness of any Foreign Subsidiary);

(i) Indebtedness in respect of letters of credit supporting obligations in the ordinary course of business (not consisting of Indebtedness) in an aggregate amount (for the Borrower and all Subsidiaries) at any one time outstanding which, together with the aggregate outstanding letters of credit set forth on the schedule referred to in clause (b) above, shall not exceed $10,000,000; and

(j) so long as no Default or Event of Default has occurred and is continuing or would result therefrom at the time incurred, additional unsecured Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount (for the Borrower and all Subsidiaries) not to exceed $15,000,000 at any one time outstanding.

9.3 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, assume or otherwise permit to exist any Lien upon any of its property or assets, whether or not Collateral and whether now owned or hereafter acquired, or in any proceeds or income therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, assets, proceeds or income, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of the Collateral Trustee for the benefit of the Secured Parties created pursuant to the Security Documents;

(b) Liens existing on the Principal Instrument Delivery Date set forth on Schedule D-5 to the Information Certificate;

(c) Liens for taxes not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, *provided* that (i) adequate reserves with respect to any such contested amounts are maintained in conformity with GAAP and (ii) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such claim;

(d) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and repairmen, and other like Liens imposed by law (other than any such Lien imposed by the Code or by ERISA), arising in the ordinary course of business that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, *provided* that (i) adequate reserves with respect to any such contested amounts are maintained in conformity with GAAP and (ii) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such claim;

(e) pledges or deposits incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (other than ERISA);

(f) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (in each case exclusive of obligations for the payment of borrowed money or other Indebtedness) incurred in the ordinary course of business, in an aggregate amount (for the Borrower and all Subsidiaries) at any one time outstanding which shall not exceed $5,000,000;

(g) easements, rights-of-way, restrictions and other minor defects or irregularities in title to real property that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(h) Liens securing Indebtedness of the Borrower or any Subsidiary incurred pursuant to Section 9.2(c) to finance the acquisition of equipment, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such equipment or in connection with any refinancing, renewal or extension thereof, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (and any accessions, additions, replacements and proceeds thereto or thereof) and (iii) for any refinancings, renewals or extensions, the amount of Indebtedness secured thereby is not increased;

(i) Liens on cash deposits and other funds maintained in an account with a depository institution, in each case to the extent such Liens arise in the ordinary course of business by virtue of any statutory or common law provision relating to banker's liens or rights of setoff; *provided*, that, except in the case of Permitted Restricted Deposits, (i) the applicable deposit account is not intended to provide collateral or security to the applicable depository institution or any other Person and (ii) with respect

to accounts maintained by Borrower or any Guarantor (other than Excluded Accounts), such account is subject to a Control Agreement (or, in the case of a Foreign Subsidiary, other security arrangement satisfactory to DOE) executed and delivered by such depository institution, and any such Lien shall be expressly subordinate to the Lien created in such account in favor of the Secured Parties pursuant to the Security Agreement;

(j) licenses of Intellectual Property permitted by Section 9.5;

(k) non-consensual Liens securing judgments for the payment of money not constituting an Event of Default under Section 10.1(j);

(l) Liens on specific items of inventory or other goods and the proceeds thereof securing obligations in respect of trade letters of credit permitted by Section 9.2(i) issued for the account of Borrower or any Subsidiary to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(m) Liens on insurance proceeds in favor of the applicable insurance provider securing the payment of financed insurance premiums in the ordinary course of business;

(n) leases or subleases granted to third parties in the ordinary course of business which do not interfere in any material respect with the business operations of the Borrower and its Subsidiaries or the value of the Collateral;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods in the ordinary course of business;

(p) any interest of title of a lessor under, and precautionary UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases;

(q) Liens on cash collateral in an aggregate amount (for the Borrower and all Subsidiaries) not to exceed $10,000,000 at any one time outstanding securing obligations with respect to letters of credit (including any letters of credit existing on the Principal Instrument Delivery Date) permitted by Section 9.2(i);

(r) Liens existing on property at the time the Borrower or any Subsidiary acquired such property after the date hereof that do not secure any Indebtedness, *provided* that any such Lien may not extend to any other property of the Borrower or any of its Subsidiaries and such Lien secures only those obligations which it secures on the date of such acquisition; *provided further* that such Lien shall not have been created in anticipation of or in connection with the transaction or series of transactions pursuant to which such property was acquired by the Borrower or any Subsidiary and such transactions were permitted by this Agreement; and

(s) Liens not otherwise permitted by this Section on assets not included in the Collateral securing obligations that are not Indebtedness so long as neither (i) the aggregate outstanding amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrower and all Subsidiaries) $2,500,000 at any one time outstanding.

9.4 Investments. The Borrower shall not, and shall not permit of its Subsidiaries to, make or permit to remain outstanding any loans, extensions of credit or advances by the Borrower or any Subsidiary to or investments by the Borrower or any Subsidiary in any Person (whether by means of acquisition of any stocks, notes or other securities or obligations of such Person or by capital contribution or otherwise), including any partnership or joint venture interest in such other Person), or assume, guarantee, endorse or otherwise become directly or contingently liable for any obligation or Indebtedness of, any Person (all of the foregoing, "Investments"), except the following:

(a) Investments in Cash Equivalents;

(b) Investments existing on the Principal Instrument Delivery Date set forth on Schedule A-7 to the Information Certificate under the heading "Owned Stock" and on Schedule C-1 to the Information Certificate under the heading "Other Investment Property";

(c) loans and advances to employees of the Borrower or its Subsidiaries in the ordinary course of business for travel, entertainment and relocation expenses in an aggregate amount not to exceed $1,000,000 at any one time outstanding;

(d) intercompany loans to the extent permitted by Section 9.2(d);

(e) Investments in any Guarantor that is a Domestic Subsidiary;

(f) Investments in any Foreign Subsidiaries, whether or not a Guarantor, made during any fiscal year commencing 2010 in an aggregate amount (including any loans thereto or guarantees of the obligations thereof) for such fiscal year not to exceed $15,000,000;

(g) Investments in Hedging Transactions permitted under Section 9.19;

(h) Investments in the nature of lease, utility, governmental, performance or other deposits in the ordinary course of business to the extent permitted by Section 9.3;

(i) Investments received in satisfaction or partial satisfaction of accounts from financially troubled account debtors (whether in connection with a foreclosure, bankruptcy, workout or otherwise) in respect of obligations in favor of the Borrower arising in the ordinary course of business to the extent reasonably necessary to

prevent or limit loss, provided that no new consideration is paid by the Borrower or any of its Subsidiaries in connection therewith;

(j) Investments consisting of promissory notes or rights to receive deferred payments of cash received as consideration in connection with a Disposition permitted under Section 9.5(l);

(k) Investments consisting of prepaid royalties under licensing arrangements or prepaid expenses for the purchase of goods and services, in each case made in the ordinary course of business for time periods consistent with customary commercial practices;

(l) (i) guarantees permitted by Section 9.2(h), (ii) guarantees in the ordinary course of business of obligations of Subsidiaries to landlords, suppliers, customers, franchisees and licensees not constituting Indebtedness (but subject to the limitations of Section 9.4(f) in the case of any such guarantees of obligations of Foreign Subsidiaries), and (iii) guarantees in the ordinary course of business of obligations of suppliers and customers not constituting Indebtedness in connection with commercial transactions;

(m) so long as both before and after giving effect thereto no Default or Event of Default shall have occurred and be continuing or would result therefrom, any Qualifying Investment made at any time after (but not before) the closing of a Qualified IPO in (x) a Cash Investment Amount that (when taken together with the Cash Investment Amounts of any related series of Permitted Equity Proceeds Investments) does not exceed the Excess Equity Proceeds Amount at such time and (y) an Investment Amount that (when taken together with the Investment Amounts of any related series of Permitted Equity Proceeds Investments) does not exceed the Maximum Qualifying Investment Amount at such time, *provided* that such Investment satisfies all of the following conditions (each Qualifying Investment that meets all the requirements of this Section 9.4(m) being referred to as a "Permitted Equity Proceeds Investment"):

(i) such Investment is not made in or with, or acquired from, any Affiliate (other than the Borrower or any Subsidiary) that is not a Qualifying Affiliate;

(ii) any consideration in respect of such Investment involving a Disposition of assets of the Borrower or any Subsidiary does not include any part of the Projects and is otherwise permitted pursuant to Section 9.5; and

(iii) such Investment satisfies all of the additional conditions set forth on Annex 9.4; and

(n) so long as both before and after giving effect thereto no Default or Event of Default shall have occurred and be continuing or would result therefrom, any Qualifying Investment or other Investment not otherwise expressly permitted by this Section 9.4 in an Investment Amount that does not exceed (x) $15,000,000 *minus* (y) an amount equal to (A) the aggregate Investment Amount of all other Investments that have

been made in reliance on this Section 9.4(n) *less* (B) the sum of all cash returns, cash dividends and other cash distributions actually received by the Borrower or any Guarantor in respect of such Investments (which amount under this subclause (B) shall be deemed not to exceed the amount under the immediately preceding subclause (A)), *provided* that such Investment satisfies all of the following conditions:

(i) such Investment is not made in or with, or acquired from, any Domestic Subsidiary that is not a Guarantor, any Foreign Subsidiary or any other Affiliate (other than the Borrower or any Guarantor) that is not a Qualifying Affiliate; and

(ii) any consideration in respect of such Investment involving a Disposition of assets of the Borrower or any Subsidiary does not include any part of the Projects and is otherwise permitted pursuant to Section 9.5.

9.5 Merger, Dissolution or Acquisitions or Dispositions of Assets. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any transaction of merger, consolidation or amalgamation or convey, sell, lease, license or otherwise Dispose of its property or assets, or wind up, liquidate or dissolve itself (or suffer any liquidation or dissolution), or acquire (in one transaction or a series of transactions) assets constituting all or any substantial part of the business or assets of any other Person or any division or other business unit of any Person, or issue any Capital Stock, except the following:

(a) sales of inventory (including refurbished prototypes) in the ordinary course of business;

(b) (i) Dispositions of obsolete or worn-out equipment in the ordinary course of business, and (ii) sales of surplus equipment in the ordinary course of business; *provided* that (x) in the case of any sale of equipment that is part of either Project, the consideration for such sale shall be either cash or equipment that becomes part of such Project (or a combination thereof), and (y) any Net Cash Proceeds of any sale pursuant to this Section 9.5(b) are applied in accordance with Section 3.6(c)(i) to the extent applicable;

(c) mergers or consolidations of any Subsidiary into the Borrower (*provided* that the Borrower shall be the continuing or surviving entity) or with or into any Guarantor (*provided* that the continuing or surviving entity shall be a Guarantor);

(d) mergers or consolidations of any Non-Guarantor Subsidiary into any other Non-Guarantor Subsidiary of the Borrower;

(e) Dispositions of any property or assets of any Subsidiary to the Borrower or any Guarantor or, in the case of a Disposition by a Non-Guarantor Subsidiary only, to any other Non-Guarantor Subsidiary of the Borrower;

(f) any Event of Loss (or any event that would have been an Event of Loss had losses exceeded $5,000,000) so long as Borrower or such Subsidiary complies with Section 7.5;

(g) issuance of Capital Stock by any Subsidiary to the Borrower or any Guarantor or, in the case of any Non-Guarantor Subsidiary, to any other Non-Guarantor Subsidiary of the Borrower;

(h) issuance of Capital Stock (other than Disqualified Stock unless otherwise permitted by Section 9.2) by the Borrower to any other Person;

(i) (i) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business on customary terms that do not impair the value of such Intellectual Property or any other assets as Collateral and (ii) licenses of Intellectual Property on an exclusive basis so long as such exclusive licensing (A) is limited to either (x) particular fields of use (excluding any field of use in which the Borrower or any Subsidiary is exploiting or intends to exploit such Intellectual Property), or (y) licensing Intellectual Property in connection with customized products for customers that are exclusive for periods not longer than five years, or (B) is contemplated by the Business Plan; *provided* that in no event may any exclusive license restrict the ability of the Borrower or any Subsidiary to exploit Intellectual Property that is required for the design, construction or operation of Project P or Project S, or for producing products as contemplated by the Business Plan;

(j) leases or subleases permitted under Section 9.3(n);

(k) the creation, incurrence or assumption of any Lien permitted under Section 9.3;

(l) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, sales by the Borrower and its Subsidiaries not otherwise permitted under this Section 9.5 for fair market value payable in cash, Reinvestment Property or Investments of the type permitted under Section 9.4(j) or (m) (or any combination thereof) made during any fiscal year commencing 2010 in an aggregate amount for such fiscal year not to exceed $15,000,000; *provided* that (i) no portion of any Project may be sold pursuant to this Section 9.5(l), and (ii) any Net Cash Proceeds of any sale pursuant to this Section 9.5(l) are applied in accordance with Section 3.6(c)(i) to the extent applicable;

(m) purchases of inventory or materials in the ordinary course of business;

(n) the making of Capital Expenditures permitted by Annex 9.1;

(o) the making of Investments permitted under Section 9.4 (including any Permitted Acquisition);

(p) as part of any Permitted Acquisition, mergers or consolidations of any Person into the Borrower (*provided* that the Borrower shall be the continuing or surviving entity) or with or into any Subsidiary (*provided* that the continuing or surviving entity shall be a Wholly-Owned Subsidiary of the Borrower; and *provided further* that if

such Subsidiary is a Guarantor, the continuing or surviving entity shall be a Guarantor); and

(q) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, transactions between the Borrower and CAEATFA involving solely the transfer of title to CAEATFA followed by the immediate retransfer of title to the Borrower of certain equipment solely for the purpose of obtaining an exemption from California sales and use tax under California Tax Code 6010.8, as described in detail satisfactory to DOE on Schedule D-11 to the Information Certificate; *provided* that (i) the Borrower shall comply with all regulations and requirements of CAEATFA and the California State Board of Equalization respect to such transactions, (ii) no such transaction shall occur with respect to any equipment after it becomes a Program Asset unless the Collateral Trustee has a First Priority Lien on such equipment at all times before, during and after such transaction and CAEATFA acknowledges such Lien, (iii) no such transfer of title shall occur unless such retransfer in fact occurs immediately, (iv) such transactions are effected pursuant to the documentation entitled "CAEATFA Conveyance/Reconveyance Instrument" included in the Forms Supplement or such other documentation that has been reviewed and approved by DOE in advance, (v) such transactions do not impose any liabilities on the Borrower or any of its Subsidiaries or require them to make any payments other than an administrative fee payable to CAEATFA in an aggregate amount for any item of equipment not to exceed 6/10 of 1% of the value of such item, and (vi) CAEATFA shall not impose or otherwise permit any Liens on any such equipment (except for the Liens in favor of the Collateral Trustee for the benefit of the Secured Parties created pursuant to the Security Documents).

9.6 Sale and Lease-Back Transactions. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any arrangement with any Person whereby it shall sell or transfer any property or assets, whether now owned or hereafter acquired, and thereafter rent or lease such property or assets or other property or assets which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

9.7 Restricted Payments. The Borrower shall not, shall not agree to, and shall not permit any of its Subsidiaries to or to agree to, directly or indirectly, (v) reduce its capital or declare or make or authorize any dividend or any other payment or distribution of cash or property to such Person's Equity Owners on account of any Capital Stock of the Borrower or any Subsidiary, (w) redeem, retire, purchase or otherwise acquire any of Capital Stock of the Borrower or any Subsidiary, (x) make any payment with respect to principal or interest on or purchase, redeem, retire or defease any Indebtedness of the Borrower or any Subsidiary, (y) make any payment of any management, advisory or similar fees to any Affiliate or (z) set aside any funds for any of the foregoing (each of the foregoing a "Restricted Payment") except the following:

(a) dividends or distributions from a Subsidiary to the Borrower or any Guarantor and, in the case of a Non-Guarantor Subsidiary, to any other Non-Guarantor Subsidiary of the Borrower;

(b) payments of Indebtedness under the Loan Documents in accordance with the terms thereof;

(c) regularly scheduled payments of principal and interest as and when due in respect of any other Indebtedness (other than subordinated Indebtedness) expressly permitted under Section 9.2; *provided*, that the Borrower shall not, shall not agree to, and shall not permit any of its Subsidiaries to or to agree to, directly or indirectly, (i) prepay, redeem, repurchase or defease any such Indebtedness prior to the stated maturity thereof, (ii) pay in cash any amount in respect of any Indebtedness that may at the obligor's option be paid in kind or (iii) pay any principal, interest or other amount on or in respect of any subordinated Indebtedness, whether at or prior to maturity; *provided, further*, that the Borrower or any Subsidiary may make prepayments or redemptions of Indebtedness in connection with a refunding or refinancing of such Indebtedness permitted by Section 9.2;

(d) the Borrower may declare and pay dividends and distributions payable only in common stock of the Borrower;

(e) the Borrower may acquire Capital Stock of the Borrower in connection with the exercise of stock options or stock appreciation rights by way of cashless exercise or in connection with the satisfaction of customary withholding tax obligations; *provided*, that the Borrower shall not pay for such Capital Stock in cash or other property or assets of the Borrower or any of its Subsidiaries;

(f) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may purchase fractional shares of Capital Stock arising out of stock dividends, splits or combinations, or business combinations, or conversions of convertible securities, in an aggregate amount that does not exceed $1,000,000 for all such transactions;

(g) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Borrower may purchase, repurchase, redeem, defease, acquire or retire for value Capital Stock from any current or former officer, director, employee or consultant (in such person's role as an officer, director, employee or consultant) during any fiscal year commencing 2010 in an aggregate amount for such fiscal year not to exceed $1,000,000;

(h) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Borrower may purchase, repurchase, redeem, defease, acquire or retire for value any rights distributed in connection with any stockholder rights plan adopted in connection with or after an IPO in an aggregate amount that does not exceed $100,000 for all such transactions; and

(i) in connection with any Permitted Equity Proceeds Investment, Borrower or any Subsidiary may (i) in settlement of indemnification claims in connection with such Investment, receive or accept the return to the Borrower or any Subsidiary of Capital Stock constituting a portion of the non-cash consideration paid by the Borrower

or any Subsidiary in connection with such Investment and (ii) to the extent permitted under Section 9.4(m) as a Permitted Equity Proceeds Investment, make payments or distributions to dissenting stockholders pursuant to applicable Requirements of Law.

9.8 Use of Proceeds. The Borrower shall not use the proceeds of any Advance for any purpose other than as specified in Section 7.11.

9.9 Affiliate Transactions. The Borrower shall not, shall not agree to, and shall not permit any of its Subsidiaries to or to agree to, enter into any transaction, including any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor) unless such transaction is otherwise permitted under this Agreement, in the ordinary course of business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; *provided*, the foregoing restriction shall not apply to:

(a) transactions between the Borrower or any Guarantor and any Non-Guarantor or between Non-Guarantors for transfer pricing arrangements that otherwise comply with applicable laws and Section 9.13;

(b) Restricted Payments permitted to be made pursuant to Section 9.7; and

(c) (i) reasonable and customary indemnification of members of the board of directors (or similar governing body) of the Borrower and its Subsidiaries and (ii) reasonable and customary fees paid in the ordinary course of business to those members of such boards of directors (or similar governing bodies) who are not officers or employees of the Borrower or any of its Subsidiaries, *provided* that, prior to the closing of an IPO, such fees shall be payable only in the form of common stock of the Borrower or options to purchase common stock of the Borrower on customary terms.

9.10 Accounts. The Borrower shall not, and shall not permit any Guarantor to, (a) maintain or establish any deposit account or securities account that is not subject to a Control Agreement (except for Excluded Accounts) (or, in the case of any Foreign Subsidiaries, other security arrangements satisfactory to DOE) or (b) deposit any Collateral (including the proceeds thereof) or the proceeds of the Loans in a deposit account or securities account that is not subject to a Control Agreement (or, in the case of any Foreign Subsidiaries, other security arrangements satisfactory to DOE), except for deposits into the Collateral Account to the extent required hereunder or under the Collateral Trust Agreement.

9.11 Intellectual Property.

(a) The Borrower shall not, and shall cause each of its Subsidiaries not to, (i) do any act or omit to do any act whereby any of the material Intellectual Property owned by the Borrower or any of its Subsidiaries lapses or becomes invalidated, abandoned, dedicated to the public, or unenforceable, as applicable, or which would

adversely affect the validity, grant, or enforceability of the security interest granted therein pursuant to the Security Documents.

(b) The Borrower shall not, with respect to any Trademarks which are material to the business of the Borrower or any of its Subsidiaries, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and the Borrower and each of its Subsidiaries shall take reasonable measures to insure that licensees of such Trademarks use such consistent standards of quality.

(c) The Borrower shall not permit any material Intellectual Property to be owned by any Foreign Subsidiary that is not a Guarantor and that does not grant a First Priority Lien on such Intellectual Property in favor of the Secured Parties enforceable under the laws of the relevant jurisdiction, other than (i) non-United States registrations for Trademarks to the extent the same are required to be held in the name of a Foreign Subsidiary and (ii) Intellectual Property acquired in a Permitted Acquisition of or by a Foreign Subsidiary, so long as any Intellectual Property required for the design, construction and operation of Project S or P, or for producing products as contemplated by the Business Plan, is owned or fully available for use by the Borrower without restriction.

9.12 Subsidiaries. The Borrower shall not, and shall not permit any of its Subsidiaries to, form or have any Subsidiaries except Wholly-Owned Subsidiaries as to which all applicable requirements of the Loan Documents have been met.

9.13 Limitations on Lines of Business.

(a) The Borrower shall not, and shall not permit any of its Subsidiaries to (i) engage in any business other than the business engaged in by the Borrower and its Subsidiaries on the Principal Instrument Delivery Date and any other business reasonably related, ancillary or incidental thereto that is a Strategic Business or (ii) undertake any action that could lead to a material alteration of the nature or conduct of its business or the nature or scope of any Project, except in each case as contemplated in the Business Plan.

(b) The Borrower shall not permit any Foreign Subsidiary to incur any liabilities or engage in any activities or enter into any transaction with the Borrower or any of its Domestic Subsidiaries, in each case except in the ordinary course of business consistent with past practices of such Foreign Subsidiary or as contemplated in the Business Plan.

9.14 Organizational Documents. The Borrower shall not, and shall not permit any of its Subsidiaries to, amend or modify, or seek a waiver or consent in respect of, its Organizational Documents in a manner that is materially adverse to the interests of the Lender Parties (other than in their capacity as a holder of equity of the Borrower; it being understood

that a failure to perform the covenant in the Warrant relating to amendments to the Borrower's Organizational Documents shall nonetheless be an Event of Default hereunder).

9.15 Changes to Accounting Principles. The Borrower shall not, and shall not permit any of its Subsidiaries to, make or permit any changes in its Fiscal Year or any other accounting principles or the application thereof, except as required or permitted by GAAP.

9.16 Modifications to Material Agreements and Business Plans. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) agree to any amendment, modification, termination, supplement or waiver of, or waive any right to consent to any amendment, modification, termination, supplement or waiver of any right with respect to, or assign any of the respective duties or obligations under, any Project Document, in each case in a manner that is materially adverse to the interests of the Lender Parties;

(b) make any material modification to any Business Plan or Project Budget without the prior written consent of DOE;

(c) permit any Project Document to include any provisions restricting its assignment as Collateral (including upon exercise of remedies against Collateral) or causing or giving the counterparty the right to cause such contract to be terminated or materially impaired as a result, directly or indirectly, of any Event of Default or exercise of remedies under the Loan Documents; or

(d) with respect to any other contracts entered into by the Borrower or any Subsidiary after the date hereof the loss of which could be reasonably expected to have a Material Adverse Effect, fail to use commercially reasonable efforts to avoid or limit the inclusion in such contracts of any provision referred to in clause (c) of this Section 9.16.

9.17 Negative Pledge Clauses. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or suffer to exist or become effective any agreement that prohibits, limits or imposes any condition upon the ability of the Borrower or any Subsidiary to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its obligations under the Loan Documents or any refinancing thereof, or upon the ability of any Subsidiary to guaranty any of the foregoing, other than:

(a) this Agreement and the other Loan Documents;

(b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against Liens on the assets financed thereby and any accessions, and proceeds thereto or thereof) and any refinancing, renewal or extension of such Indebtedness to the extent permitted hereunder and which do not expand the scope of such restriction;

(c) any agreements governing any Permitted Restricted Deposits to the extent contemplated by the definition thereof;

(d) restrictions by reason of customary provisions restricting Liens, assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business that are otherwise permitted under this Agreement (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be);

(e) provisions contained in sales agreements, purchase agreements or acquisition agreements (including by way of merger, acquisition or consolidation, to the extent otherwise permitted under this Agreement) entered into by the Borrower or any Subsidiary and solely to the extent (i) in effect pending the closing of such transaction, (ii) such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such sales agreement, purchase agreement or acquisition, and (iii) such agreement permits the Liens created by the Loan Documents;

(f) provisions in any joint venture agreement or a similar agreement applicable to a joint venture that, in each case, is entered into in the ordinary course of business and otherwise permitted under this Agreement if such provisions are reasonably customary for such agreements and apply solely to such joint venture and, to the extent applicable, comply with the requirements relating to such agreements set forth in Annex 9.4; and

(g) restrictions and conditions applicable to any Subsidiary acquired after the date hereof in a Permitted Acquisition that were in existence at the time of such Investment, were not created in anticipation of such Investment and apply solely to such Subsidiary.

9.18 Clauses Restricting Subsidiary Distributions. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Borrower to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower, (b) make loans or advances to, or other Investments in, the Borrower or any other Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such encumbrances or restrictions existing under or by reason of:

(i) any restrictions existing under the Loan Documents;

(ii) any restrictions in agreements governing any Permitted Liens or Disposition of assets permitted hereby (in which case such restrictions shall only be effective against the assets governed thereby and any accessions thereto and proceeds thereof);

(iii) customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and other agreements entered into in the ordinary course of business that are otherwise permitted under this Agreements (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be);

(iv) provisions contained in sales agreements, purchase agreements or acquisition agreements (including by way of merger, acquisition or consolidation, to the extent otherwise permitted under this Agreement) entered into by the Borrower or any Subsidiary and solely to the extent (x) in effect pending the closing of such transaction, (y) such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such sales agreement, purchase agreement or acquisition, and (z) such agreement permits the Liens created by the Loan Documents;

(v) existing by virtue of, or arising under, applicable law, regulation, order, approval, license, grant or similar restriction, in each case issued or imposed by a Governmental Authority;

(vi) restrictions provided in any joint venture agreement or a similar agreement applicable to a joint venture that, in each case, is entered into in the ordinary course of business and otherwise permitted under this Agreement if such restrictions are reasonably customary for such agreements and apply solely to such joint venture and, to the extent applicable, comply with the requirements relating to such agreements set forth in Annex 9.4; and

(vii) restrictions applicable to any Subsidiary acquired in a Permitted Acquisition after the date hereof that were in existence at the time of such Investment, were not created in anticipation of such Investment and apply solely to such Subsidiary and, to the extent applicable, comply with the requirements relating thereto set forth in Annex 9.4.

9.19 Hedging Transactions. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any Hedging Transactions except in the ordinary course of business for the purpose of hedging risks associated with interest rate, commodities and currency liabilities held by such Person and not for purposes of speculation or taking a "market view".

9.20 Improper Use. The Borrower shall not, and shall not permit any of its Subsidiaries to, use, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Sites or Projects or any other Collateral for any purpose: (a) that would be illegal or dangerous (unless safeguarded as required by applicable Requirements of Law), (b) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) that may make void, voidable or cancelable any insurance then in force with respect to the Project or any part thereof, (d) that may adversely affect the Collateral or (e) other than for the intended purpose thereof in the construction, operation and maintenance of the Projects or otherwise in the Borrower's or such Subsidiary's business.

9.21 Margin Regulations. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly apply any part of the proceeds of any Advance or other revenues in any manner that would violate the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve of the United States, or any regulations, interpretations or rulings thereunder.

9.22 Environmental Laws. The Borrower shall not, and shall not permit any of its Subsidiaries to, undertake any action or Release any Hazardous Substances in violation in any material respect of any Environmental Law and shall ensure that the Projects and their other business shall be operated in compliance in all material respects with all Environmental Laws and that the Projects and their other businesses shall not be operated in any manner that would pose a hazard to public health or safety or to the environment. The Borrower shall, and shall cause its Subsidiaries to, maintain all material Governmental Approvals required pursuant to Environmental Laws.

9.23 ERISA. Neither the Borrower nor any ERISA Affiliate shall adopt, establish, participate in, or incur any obligation to contribute to, any Pension Plan or incur any liability to provide post-retirement welfare benefits to employees or former employees except as may be required by law, including the Consolidated Omnibus Budget Reconciliation Act or any similar state law.

9.24 Investment Company Act. The Borrower shall not, and shall not permit any of its Subsidiaries to, take any action that would result in the Borrower being required to register as an "investment company" under the Investment Company Act.

9.25 Debarment Regulations.

(a) The Borrower shall comply with the applicable requirements set forth in 2 C.F.R. 180 with respect to the construction, operation or maintenance of any Project, including the obligation to verify whether Persons with whom the Borrower enters into contracts in connection with the construction, operation or maintenance of any Project are excluded or disqualified in accordance with the approved verification methods set forth in 2 C.F.R. 180.300.

(b) The Borrower will not fail to comply with any and all Debarment Regulations in a manner which results in the Borrower being debarred, suspended, declared ineligible or voluntarily excluded from participation in procurement or nonprocurement transaction with any United States federal government department or agency pursuant to any of such Debarment Regulations.

9.26 Public Statements. Neither the Borrower nor any Subsidiary, nor any director, officer, employee or other agent affiliated with the Borrower or any Person affiliated with any of the foregoing, shall make (a) any press announcements about the Projects, the Loans or any Loan Documents or (b) any other public statements about the Loans or any Loan Documents, in each case without the prior approval of the Director of the ATVM Program at DOE; *provided* that, in connection with and following the closing of an IPO, the Borrower may do so to the extent that (i) the Borrower reasonably believes, upon advice of counsel, that it is so

required by applicable Requirements of Law or (ii) the applicable information is generally available to the public other than as a result of any breach of this Agreement; *provided* further that, prior to making any press announcement or public statement with respect to the Loans or any Loan Document in reliance upon the preceding proviso, the Borrower shall consult with DOE reasonably in advance of such disclosure to discuss whether such disclosure is required and to agree upon the form and substance of such disclosure.

9.27 IPO and Other Equity Offerings.

(a) The Borrower shall not at any time initiate, manage, conduct, coordinate or facilitate any Equity Offering unless the Borrower receives the following applicable percentage of the Net Offering Proceeds from each Equity Offering:

(i) at least seventy-five percent (75%) in the aggregate of the Net Offering Proceeds from each Equity Offering that occurs at any time after November 20, 2009 but prior to an IPO (each Equity Offering referred to in this clause (i), a "Pre-IPO Equity Offering");

(ii) at least seventy-five percent (75%) in the aggregate of the Net Offering Proceeds from an IPO; and

(iii) at least fifty percent (50%) in the aggregate of the Net Offering Proceeds from each Equity Offering that occurs after an IPO (each Equity Offering referred to in this clause (iii), a "Follow-On Equity Offering").

(b) A portion of the Net Offering Proceeds of each Equity Offering shall be deposited in the Dedicated Account to the extent required by Section 2.12(d). The balance of such Net Offering Proceeds may be used by the Borrower for any purpose not prohibited by this Agreement; *provided* that in no event may any such Net Offering Proceeds be used to pay bonuses or other compensation to officers, directors, employees or consultants of the Borrower or any of its Subsidiaries in excess of the amounts contemplated by the Business Plan.

(c) The term "Equity Offering" means any offering, issuance or sale of any Capital Stock of the Borrower, whether by the Borrower or any holder of Capital Stock of the Borrower and whether pursuant to a private or public offering or sale, and including any primary and secondary offerings, whether made together as one offering and sale or issuance or in separate offerings and sales or issuances, but excluding (i) the sale of securities to employees of the Borrower pursuant to a stock option, stock purchase or similar plan and (ii) the issuance of warrants to vendors in the ordinary course of business for no additional consideration. All such offerings, sales and issuances made in the same transaction or in a series of related transactions shall be deemed to be a single Equity Offering for purposes of this Section 9.27.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

10.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder.

(a) Failure to Make Payment Under Loan Documents. The Borrower or any of its Subsidiaries shall fail to pay, in accordance with the terms of the Loan Documents (whether by scheduled maturity, required prepayment, by acceleration or otherwise), (i) any principal of any Loan or any Reimbursement Obligation on or before the date such amount is due, or (ii) any interest, fee, charge or other amount due under any Loan Document for a period of three (3) Business Days after the date such amount is due.

(b) Misstatements; Omissions. Any representation or warranty confirmed or made in any Loan Document by or on behalf of the Borrower or any of its Subsidiaries or in any certificate, financial statement or other document (including the Information Certificate, the Collateral Schedules or any Advance Request) provided by or on behalf of the Borrower or any of its Subsidiaries to any Lender Party or their respective designees, agents or representatives pursuant to or in connection with the transactions contemplated by the Transaction Documents shall be found to have been incorrect, false or misleading in any material respect (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) when made or deemed to have been made (it being understood that any certification by the Borrower or any of its Subsidiaries set forth in any such document shall be treated as a representation and warranty hereunder).

(c) Covenants and Other Agreements with Cure Period. The Borrower or any of its Subsidiaries shall fail to perform or observe any term, covenant or agreement (other than those set forth in Sections 10.1(a), (b) or (d) or any other clause of this Section 10.1) contained in any Loan Document to which it is a party, where (if such default is remediable) such default has not been remedied within thirty (30) days or such other time period as may be specified in the applicable Loan Document after such party receives notice or should reasonably have had Knowledge of such failure.

(d) Covenants Without Cure Period. The Borrower or any of its Subsidiaries shall fail to perform or observe any of its other obligations under (i) any term, covenant or agreement set forth in Section 2.8, 2.9, 2.12 or 2.13, in Section 7.1 (but only with respect to maintaining the Borrower's existence), in Section 7.7(b), in Article VIII (unless no time period is specified therefor in such Article VIII) or in Article IX or (ii) any other negative covenant contained in any Loan Document to which it is a party, where such default has not been remedied within the cure period, if any, specified in such Loan Document.

(e) Default Under or Termination of Any Project Lease.

(i) The Borrower or any of its Subsidiaries shall breach or default under any of its material agreements, conditions, terms or covenants contained in any Project Lease to which it is a party and such breach or default shall continue unremedied beyond any applicable cure period set forth therein.

(ii) Any Project Lease or any material provision thereof at any time for any reason (i) is or becomes invalid, illegal, void or unenforceable or any party thereto shall have repudiated or disavowed or taken any action to challenge the validity or enforceability thereof, or (ii) except as otherwise permitted hereunder, ceases to be in full force and effect except at the stated termination date thereof.

(f) Unenforceability, Termination, Repudiation or Transfer of Any Loan Document.

(i) The Borrower or any of its Subsidiaries admits its inability to, or intention not to, perform or comply with any material provisions or obligations under any Loan Document.

(ii) This Agreement or any of the other Loan Documents or any material provision hereof or thereof at any time for any reason (i) is or becomes invalid, illegal, void or unenforceable or any party thereto shall have repudiated or disavowed or taken any action to challenge the validity or enforceability of such agreement, or (ii) ceases to be in full force and effect, or the Borrower or any of its Subsidiaries so asserts, prior to the repayment in full of all Secured Obligations and the reduction of the Loan Commitment Amounts to zero.

(g) Security Interests. Any of the Security Documents shall fail to provide the Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby (including the priority intended to be created thereby) or any such Lien shall fail to have the priority contemplated therefor in such Security Documents, or any such Security Document or Lien shall cease to be in full force and effect, or the validity thereof or the applicability thereof to the Secured Obligations, or any other obligations purported to be secured or guaranteed thereby or any part thereof, shall be disaffirmed by or on behalf of the Borrower, any Subsidiary or any other party thereto.

(h) Change of Control. A Change of Control shall occur.

(i) Default under Other Indebtedness.

(i) The Borrower or any of its Subsidiaries shall default in the payment of any principal, interest or other amount due under any agreement or instrument evidencing, or under which the Borrower or any of its Subsidiaries has outstanding at any time, any Indebtedness (other than the Loans) in an aggregate principal amount in excess of $5,000,000 for a period beyond any applicable grace period; or

(ii) Any other default occurs under any such agreement or instrument, if the effect of such default is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or to require the prepayment, redemption, repurchase or defeasance thereof prior to its stated maturity.

(j) Judgments. (i) One or more judgments shall be entered against Borrower or any of its Subsidiaries for the payment of money in excess of $5,000,000 in the aggregate to the extent not covered by insurance that is in compliance with this Agreement and as to which the insurance company has acknowledged coverage, which shall not be vacated, discharged or stayed or bonded pending appeal for a period of thirty (30) consecutive days and during which period a stay of enforcement shall not be in effect; or (ii) one or more judgments shall be entered against Borrower or any of its Subsidiaries that are non-monetary in nature which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and which shall not be vacated, discharged or stayed or bonded pending appeal for a period of thirty (30) consecutive days and during which period a stay of enforcement shall not be in effect.

(k) Bankruptcy; Insolvency.

(i) Involuntary Bankruptcy, Etc. (i) a court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower or any of its Subsidiaries in any Insolvency Proceeding; or (ii) an Insolvency Proceeding shall have been commenced against the Borrower or any of its Subsidiaries and such proceeding (in the case of this clause (ii)) continues undismissed for sixty (60) days.

(ii) Voluntary Bankruptcy, Etc. The institution or consent by the Borrower or any of its Subsidiaries of or to any Insolvency Proceeding; or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due; or the Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or any other event shall have occurred that under any Requirements of Law would have an effect analogous to any of those events listed above in this Section 10.1(k) with respect to any such Person; or any action is taken by any such Person or its board of directors or other governing body for the purpose of effecting any of the foregoing.

(l) Governmental Approvals. The Borrower or any of its Subsidiaries shall fail to obtain, renew, maintain or comply with any Governmental Approval, or any such Governmental Approval shall be rescinded, terminated, suspended, modified, withdrawn or withheld or shall be determined to be invalid or shall cease to be in full force and effect, or any proceedings shall be commenced by or before any Governmental Authority for the purpose of rescinding, terminating, suspending, modifying or withholding any Governmental Approval if such failure, termination, revocation, proceeding or other event, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(m) Required Insurance. Any of the insurance policies required pursuant to Section 7.4 shall lapse or terminate for any reason and shall not be replaced with comparable insurance policies satisfactory to DOE in its sole discretion within thirty (30) days.

(n) Force Majeure. Prior to the Specified Completion Date, continued work on any Project shall be suspended as a result of the occurrence of an Event of Force Majeure for a period of one hundred eighty (180) or more consecutive days.

(o) Failure to Complete Projects. The Borrower shall fail to complete both Projects by the Specified Completion Date, without extension for any Event of Force Majeure.

(p) ERISA Events. There occurs one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of the Borrower, any of its Subsidiaries or any of its ERISA Affiliates in excess of $5,000,000 during the term of this Agreement; or there exists, an amount of full or partial withdrawal liability, individually or in the aggregate for all Multiemployer Plans which exceeds $5,000,000.

(q) Certain Governmental Actions. Any Governmental Authority shall (i) condemn or assume custody of all or any substantial part of the property or assets of the Borrower or any of its Subsidiaries or (ii) take action to displace the management of the Borrower or any of its Subsidiaries.

(r) Casualty; Condemnation. Any real property shall be destroyed or condemned if such destruction or condemnation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect unless such destroyed or condemned real property has been restored with the proceeds of insurance in accordance with Section 7.5.

(s) Failure to Comply with Requirements of Law. The Borrower or any Subsidiary shall fail to comply with any applicable Requirements of Law if such failure, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

For the avoidance of doubt each clause of this Section 10.1 shall operate independently, and the occurrence of any such event shall constitute an Event of Default.

10.2 Remedies; Waivers.

(a) Upon the occurrence of and during the continuance of an Event of Default, DOE may exercise any one or more of the rights and remedies set forth below:

(i) declare all or any portion of the indebtedness and obligations of every type or description owed by the Borrower and its Subsidiaries to DOE and FFB under this Agreement and each other Loan Document to be immediately due and payable, and the same shall thereupon be immediately due

and payable, without any other presentment, demand, diligence, protest, notice of acceleration or other notice of any kind, all of which the Borrower hereby waives;

(ii) exercise any rights and remedies available under the Loan Documents;

(iii) take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts then due and thereafter to become due under the Loan Documents or to enforce performance of any obligation of the Borrower or any Subsidiary under the Loan Documents;

(iv) (A) refuse, and the Lender Parties shall not be obligated, to make any further Advances, and (B) reduce the Loan Commitment Amounts to zero;

(v) take those actions necessary to perfect and maintain the Liens of the Security Documents pursuant to which assets have been pledged as collateral for the repayment under the Loan Documents; and/or

(vi) set off and apply such amounts to the satisfaction of the Note P Secured Obligations or the Note S Secured Obligations under all of the Loan Documents, including any moneys of the Borrower or any Subsidiary on deposit with any Lender Party.

(b) Upon the occurrence of an Event of Default referred to in Section 10.1(k), (i) the Loan Commitment Amount shall automatically be reduced to zero, and (ii) each Advance made under the Notes, together with interest accrued thereon and all other amounts due under the Notes, this Agreement and the other Loan Documents, shall immediately mature and become due and payable, without any other presentment, demand, diligence, protest, notice of acceleration, or other notice of any kind, all of which the Borrower hereby expressly waives.

(c) Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the Loan Documents or existing at law or in equity. No delay or failure to exercise any right or power accruing under any Loan Document upon the occurrence and during the continuance of any Event of Default or otherwise shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) In order to entitle DOE to exercise any remedy reserved to DOE in this Agreement, it shall not be necessary to give any notice, other than such notice as may be required in this Agreement or any other Loan Document or under applicable Requirements of Law.

(e) If any proceeding has been commenced to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned

for any reason, or has been determined adversely to DOE or FFB, then and in every such case, subject, in each case, to any determination in such proceeding, (i) the parties hereto shall be restored to their respective former positions hereunder, and, (ii) thereafter, all rights and remedies of DOE or FFB, as the case may be, shall continue as though no such proceeding had been instituted.

(f) Whenever an Event of Default has occurred and is continuing, DOE shall have the right in its sole discretion to deliver a Notice of Default (as defined in the Collateral Trust Agreement) to the Collateral Trustee. If thereafter all Events of Default have been cured or waived in accordance with this Agreement, the upon written request of the Borrower, DOE agrees to promptly deliver to the Collateral Trustee a notice of cancellation of any Notice of Default previously delivered to the Collateral Trustee if and to the extent permitted by Section 2.1(c) of the Collateral Trust Agreement.

(g) DOE shall have the right, to be exercised (or not) in its complete discretion, to waive any covenant, Default or Event of Default by a writing setting forth the terms, conditions and extent of such waiver signed by DOE and delivered to the other parties hereto. Any such waiver may only be effected in writing duly executed by DOE, and no other course of conduct shall constitute a waiver of any provision hereof. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence so waived and not to any other similar event or occurrence that occurs subsequent to the date of such waiver.

(h) For the purpose of enabling DOE to exercise the rights and remedies under this Section 10.2, Borrower and each of its Subsidiaries hereby grant to DOE an irrevocable, non-exclusive, worldwide license (exercisable upon the occurrence of and during the continuance of an Event of Default) without payment of royalty or other compensation to Borrower or any of its Subsidiaries, subject, in the case of Trademarks owned by the Borrower or any of its Subsidiaries, to sufficient rights to quality control and inspection in favor of the Borrower or such Subsidiary, as the case may be, to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any of the Intellectual Property now owned or hereafter acquired by the Borrower, wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

10.3 Accelerated Advances. Upon the delivery of a notice of acceleration, the accelerated amount due and payable under the Notes shall be the Prepayment Price (as defined in and determined pursuant to the relevant Note) under such Notes.

ARTICLE XI

THE COLLATERAL TRUSTEE

11.1 Appointment. DOE hereby irrevocably designates and appoints, and, by accepting the benefits of this Agreement and the other Loan Documents, each of FFB and each holder of the Notes hereby irrevocably designates and appoints, the Collateral Trustee as its

agent under the Collateral Trust Agreement and the other Loan Documents, and irrevocably authorize the Collateral Trustee, in such capacity, to (a) take such action on its behalf under the provisions of the Collateral Trust Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Trustee by the terms of the Collateral Trust Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto and (b) enter into any and all Security Documents and the Collateral Trust Agreement and such other documents and instruments as shall be necessary to give effect to (A) the ranking and priority of Indebtedness and other extensions of credit and obligations contemplated by the Collateral Trust Agreement, (B) the security interests in the Collateral purported to be created by the Security Documents and (C) the other terms and conditions of the Collateral Trust Agreement. Each of DOE, FFB and each holder of the Notes further hereby agrees to be bound by the terms of the Collateral Trust Agreement to the same extent as if it were a party thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Collateral Trustee shall not have any duties or responsibilities, except those expressly set forth herein, in the Collateral Trust Agreement or in any other Loan Document to which it is a party, or any fiduciary relationship with DOE, FFB or any holder of the Notes, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement, the Collateral Trust Agreement or any other Loan Document or otherwise exist against the Collateral Trustee.

11.2 Delegation of Duties. The Collateral Trustee may execute any of the trusts or powers hereof and perform any duty its duties under this Agreement and the other Loan Documents directly or by or through agents or attorneys-in-fact. The Collateral Trustee shall be entitled to advice of counsel concerning all matters pertaining to such trusts, powers and duties. The Collateral Trustee shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it without gross negligence or willful misconduct.

11.3 Exculpatory Provisions. Neither the Collateral Trustee nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of DOE, FFB or any holder of the Notes for any recitals, statements, representations or warranties made by any Obligor or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Trustee under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Obligor party thereto to perform its obligations hereunder or thereunder. The Collateral Trustee shall not be under any obligation to DOE, FFB or any holder of any Note to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Obligor.

11.4 Non-Reliance on the Collateral Trustee. Each of DOE, FFB and each holder of the Notes expressly acknowledges that neither of the Collateral Trustee nor any of its

officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by the Collateral Trustee hereafter taken, including any review of the affairs of an Obligor or an affiliate of an Obligor, shall be deemed to constitute any representation or warranty by the Collateral Trustee to DOE, FFB or any holder of the Notes. Each of DOE, FFB and each holder of the Notes represents to the Collateral Trustee that it has, independently and without reliance upon the Collateral Trustee, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Obligors and their affiliates and made its own decision to make its Loans and other extensions of credit hereunder and enter into this Agreement. Each of DOE, FFB and each holder of the Notes also represents that it will, independently and without reliance upon the Collateral Trustee, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Obligors and their affiliates.

11.5 Collateral Trustee in Its Individual Capacity. The Collateral Trustee and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Obligor as though it were not the Collateral Trustee.

ARTICLE XII

MISCELLANEOUS

12.1 Amendments, etc. This Agreement and each other Loan Document may be amended, modified or terminated only by written instrument or written instruments signed by the parties hereto or thereto, as applicable, and, if DOE is not a party thereto, with the prior written consent of DOE. To the fullest extent permitted by applicable Requirements of Law, no act or course of dealing shall be deemed to constitute an amendment, modification or termination hereof.

12.2 Delay and Waiver. No delay or omission in exercising any right, power, privilege or remedy under this Agreement or any other Loan Document, including any rights and remedies in connection with the occurrence of a Default or Event of Default shall impair any such right, power, privilege or remedy of the Lender Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any of the Lender Parties of any right, power, privilege or remedy including any rights and remedies in connection with the occurrence of a Default or Event of Default or of any other breach or default under this Agreement or any other Loan Document, or any waiver on the part of any of the Lender Parties of any provision or condition of this Agreement or any other Loan Document, must be in writing and shall be effective only to the extent in such writing specifically set forth.

All rights, powers, privileges and remedies, either under this Agreement or any other Loan Document or by law or otherwise afforded to any of the Lender Parties, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that such Lender Parties may otherwise have.

12.3 Right of Set-Off. In addition to any rights now or hereafter granted under Requirements of Law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each of DOE, FFB and each subsequent holder of any Note or any portion of any Note is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other Indebtedness at any time held or owing by DOE, FFB or any such subsequent holder, as the case may be, (including by any of its branches and agencies wherever located) to or for the credit or the account of the Borrower or any Subsidiary against and on account of the Secured Obligations and liabilities of the Borrower or any Subsidiary to DOE, FFB or any such subsequent holder, as the case may be, under this Agreement or any other Loan Document. Each of DOE, FFB and each subsequent holder of any Note or any portion of any Note agrees promptly to notify the Borrower after any such setoff and application made by it; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application.

12.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith (including the Information Certificate or any Advance Request) shall survive the execution and delivery of this Agreement and the making of the Advances under the Funding Agreements.

12.5 Notices. Except to the extent otherwise expressly provided herein or as required by applicable Requirements of Law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission in Electronic Format) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) Business Days after being deposited in the mail, postage prepaid, provided that an email shall be sent concurrently to the addressee notifying it of such mail, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) Business Day after being deposited with such service, provided that an email shall be sent concurrently to the receiving party notifying it of such overnight delivery, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the facsimile number or address set forth with respect to such Person below:

If to DOE:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-8146
Facsimile: (202) 586-7809
Email: teslaatvmtransaction@hq.doe.gov

with a copy to (which copy shall not constitute notice):

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-5281
Facsimile: (202) 586-1499
Email: teslaatvmtransaction@hq.doe.gov

If to the Borrower:

Tesla Motors, Inc.
1050 Bing Street, San Carlos, CA 94070
Attention: Chief Financial Officer
Telephone: (650) 701-2690
Facsimile: (650) 701-2612
Email: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel
Telephone: (650) 413-4000
Facsimile: (650) 701-2620
Email: generalcounseldoe@teslamotors.com

or, as to each party, such other address or number as shall be designated by such party in a written notice to each other party hereto.

12.6 Severability; Consents.

(a) The holding by any court of competent jurisdiction that any remedy pursued by DOE hereunder is unavailable or unenforceable shall not affect in any way the ability of DOE to pursue any other remedy available to it. In the event any

provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement and shall not invalidate or render unenforceable any other provision hereof.

(b) In the event that DOE's consent is required under any of the Loan Documents, the determination whether to grant or withhold such consent shall be made by DOE in its sole discretion without any implied duty towards any other Person, except as otherwise expressly provided therein.

12.7 Judgment Currency. The Borrower agrees, to the fullest extent permitted under applicable Requirements of Law, to indemnify DOE and FFB against any loss incurred by DOE or FFB, as the case may be, as a result of any judgment or order being given or made for any amount due DOE or FFB hereunder or under any other Loan Document and such judgment or order being expressed and to be paid in a currency (the "Judgment Currency") other than U.S. Dollars (the "Currency of Denomination") and as a result of any variation between (i) the rate of exchange at which amounts in the Currency of Denomination are converted into Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange at which DOE or FFB would have been able to purchase the Currency of Denomination with the amount of the Judgment Currency actually received by DOE or FFB, as the case may be, had DOE or FFB, as the case may be, utilized the amount of Judgment Currency so received to purchase the Currency of Denomination as promptly as practicable upon receipt thereof. The foregoing indemnity shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant Currency of Denomination that are documented and reasonable in light of market conditions at the time of such conversion.

12.8 Indemnification.

(a) In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, the Borrower hereby agrees that it will pay, and will protect, indemnify, and hold harmless DOE, FFB, each other governmental agency and instrumentality of the United States and each other holder or holders of the Notes or any portion thereof, the Collateral Trustee and their respective designees, agents and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person"), on an after-tax basis, from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, to the extent permitted by applicable Requirements of Law, the reasonable fees, disbursements and other charges of counsel but not including the expenses incurred by DOE in connection with the preparation, negotiation, execution and delivery of any Transaction Documents) to which such Indemnified Person may become subject arising out of or relating to any or all of the following (each, an "Indemnified Liability"): (i) the execution or delivery of this Agreement, any Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions

contemplated hereby or thereby, (ii) the enforcement or preservation of any rights under this Agreement, any Transaction Document or any agreement or instrument prepared in connection herewith or therewith, (iii) any Loan or the use or proposed use of the proceeds thereof, (iv) any actual or alleged presence or Release of Hazardous Substance, on, under or originating from any property owned, occupied or operated by the Borrower or any of its Affiliates, or any environmental liability related in any way to the Borrower or any of its Affiliates or any of its properties, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any of its Affiliates or otherwise, and regardless of whether any Indemnified Person is a party thereto, such items (i) through (v) including, to the extent permitted by applicable Requirements of Law, the fees of counsel selected by such Indemnified Person incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 12.8, *provided* that the Borrower shall not have any obligation under this Section 12.8 to any Indemnified Person with respect to Indemnified Liabilities to the extent (i) they arise from the gross negligence or willful misconduct of such Indemnified Person or a material breach of such Indemnified Person's obligations hereunder (as determined pursuant to a final, non-appealable judgment by a court of competent jurisdiction) or (ii) the alleged Indemnified Liability arises out of any actual or alleged presence or Release of Hazardous Substance, on, under or originating from the Los Angeles Property and either the Indemnified Person is the United States federal agency that is a former owner or operator of the Los Angeles Property or the Indemnified Person's liability arises out of its relationship with that United States federal agency rather than through the Borrower, its Subsidiaries, the Projects or the Loan Documents. Any claims under this Section 12.8 in respect of any Indemnified Liabilities are referred to herein, collectively, as "Indemnity Claims".

(b) All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Late Charge Rate applicable to Advances made under the Funding Agreements as set forth in Section 12.8(f), and all such sums and costs shall be added to the Note P Secured Obligations and the Note S Secured Obligations, as applicable, and be secured by the Security Documents and shall be immediately due and payable on demand. Each such Indemnified Person shall promptly notify the Borrower in a timely manner of any such amounts payable by the Borrower hereunder, *provided* that any failure to provide such notice shall not affect the Borrower's obligations under this Section 12.8.

(c) Each Indemnified Person within ten days after the receipt by it of notice of the commencement of any action for which indemnity may be sought by it, or by any Person controlling it, from the Borrower on account of the agreements contained in this Section 12.8, shall notify the Borrower in writing of the commencement thereof, but the failure of such Indemnified Person to so notify the Borrower of any such action shall not release the Borrower from any liability that it may have to such Indemnified Person.

(d) To the extent that the undertaking in the preceding clauses of this Section 12.8 may be unenforceable because it is violative of any law or public policy, and

to provide for just and equitable contribution in the event of any such unenforceability (other than due to application of this Section 12.8), the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under Requirements of Law to the payment and satisfaction of such undertakings, on the basis of the relative fault of the Borrower, on the one hand, and the Indemnified Person, on the other hand.

(e) The provisions of this Section 12.8 shall survive foreclosure under the Security Documents and satisfaction or discharge of the Secured Obligations, and shall be in addition to any other rights and remedies of any Indemnified Person.

(f) Any amounts payable by the Borrower pursuant to this Section 12.8 shall be payable within the later to occur of (i) ten (10) Business Days after the Borrower receives an invoice for such amounts from any applicable Indemnified Person, and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Borrower's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Late Charge Rate from and after such applicable date until paid in full.

(g) The Borrower shall be entitled, at its expense, to participate in the defense of any Indemnity Claim, provided that such Indemnified Person shall have the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to the applicable Indemnified Person. Any Indemnified Person against whom any Indemnity Claim is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnified Person is advised that such Indemnity Claim is meritorious, to compromise or settle any such Indemnity Claim, provided that, with respect to settlements relating to an Indemnified Liability of $5,000,000 or more, the Borrower shall not be liable for any such compromise or settlement effected without its prior written consent (not to be unreasonably withheld) unless, in the case of an Indemnified Person that is a branch or agency of the United States federal government only, (i) such Indemnified Person is required by law (other than any regulation issued by DOE or FFB, unless DOE or FFB, as the case may be, is required pursuant to applicable law to issue regulations requiring it to compromise or settle such Indemnity Claim) to compromise or settle such Indemnity Claim, (ii) such Indemnified Person shall have provided a legal opinion to the Borrower from DOE's Office of the General Counsel or the United States Department of Justice or outside counsel reasonably acceptable to the Borrower that such Indemnified Person is required by law to compromise or settle such Indemnity Claim and (iii) such settlement or compromise is reasonable in light of the defenses available to such Indemnified Person and the probability of such Indemnified Person prevailing at trial. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 12.8.

(h) Upon payment of any Indemnity Claim by the Borrower pursuant to this Section 12.8, the Borrower, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Borrower cooperate with the

Borrower and give at the request and expense of the Borrower such further assurances as are necessary or advisable to enable the Borrower vigorously to pursue such claims.

(i) No Indemnified Person shall be obliged to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of the Borrower under this Agreement.

(j) If and to the extent that DOE (i) shall be fully paid in cash or immediately-available funds by the Borrower for any Reimbursement Obligations in respect of any payments of Reimbursement Amounts, DOE shall not be entitled to be indemnified in respect of such payments under this Section 12.8 and (ii) shall be fully paid in cash or immediately available funds in respect of any Indemnified Liability pursuant to this Section 12.8, DOE shall not be entitled to be reimbursed under Section 4.1 for such Indemnified Liability, *provided* that in the event that DOE shall be entitled at any time to seek reimbursement and indemnification in respect of any item pursuant to both Section 4.1 and this Section 12.8, then DOE shall be entitled to be paid, and may elect, in its sole and absolute discretion, to seek recovery, under either of such sections, either sequentially, concurrently or in the alternative, and *provided further* that in the event that any amount that DOE shall be entitled to be paid under either Section 4.1 or this Section 12.8, as applicable, shall not be equal to the amount that DOE is entitled to be paid under the other such section, then DOE shall be entitled to be paid the lesser amount under either applicable section, at its option as set forth in the preceding proviso, and DOE shall be entitled to be paid the excess amount under the applicable section.

12.9 Limitation on Liability. No claim shall be made by the Borrower or any of its Affiliates against any Lender Party or any of their respective Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Loan Documents or any act or omission or event occurring in connection therewith; and the Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

12.10 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 permitted assigns.

(b) The Borrower may not assign or otherwise transfer (whether by operation of law or otherwise) any of its rights or obligations under this Agreement or under any other Loan Document without the prior written consent of DOE and/or FFB, as the case may be.

(c) FFB may assign any or all of its rights, benefits and obligations under the Loan Documents and with respect to the Collateral in accordance with the

provisions of the Funding Agreements; *provided* that such assignee, by accepting the benefits of this Agreement and the other Loan Documents, (x) hereby irrevocably designates and appoints DOE to act as its agent hereunder and under the Loan Documents, (y) hereby irrevocably authorizes DOE to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are necessary or appropriate, as determined by DOE, under the Loan Documents and (z) hereby authorizes DOE to enter into all such amendments or modifications of any Loan Document on behalf of such assignee and or grant all waivers as are necessary or appropriate, as determined by DOE, under the Loan Documents (other than amendments to the Note, which amendments shall also require the consent of such assignee), provided further, however, that (i) neither DOE nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (A) liable to any assignee for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document or (B) responsible in any manner to any assignee for any recitals, statements, representations or warranties made by any Obligor or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by DOE under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Obligor party thereto to perform its obligations hereunder or thereunder and (ii) DOE may conclusively rely upon information supplied by FFB or such assignee in taking any action, or exercising any rights, in accordance with the terms of this Section 12.10.

12.11 Participations. FFB may from time to time sell or otherwise grant participations in any or all of its rights and obligations under the Loan Documents and with respect to the Collateral without the consent of the Borrower or any Collateral Trustee; *provided*, however, that, notwithstanding the foregoing, following the grant of any participation, FFB shall continue to remain fully liable for its duties and obligations hereunder and under the Note and the Borrower and the Lender Parties shall continue to deal solely and directly with FFB in connection with FFB's rights and obligations under this Agreement and the other Loan Documents.

12.12 Further Assurances and Corrective Instruments. To the extent permitted by Requirements of Law, the Borrower shall, upon the written request of DOE, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, within a reasonable period of such request, such amendments or supplements hereto, and such further instruments, and take such further actions, as may be necessary in DOE's reasonable judgment to effectuate the intention, performance and provisions hereof.

12.13 Reinstatement. Where any discharge is made in whole or in part, or any arrangement is made on the faith of, any payment, security or other disposition which is avoided or must be repaid, whether upon the insolvency, bankruptcy, liquidation or other similar proceeding or otherwise pursuant to any applicable Requirements of Law, the liability of the Borrower under this Agreement shall, to the fullest extent permitted under applicable Requirements of Law, continue as if there had been no such discharge or arrangement. DOE

shall be entitled to concede or compromise any claim that any such payment, security or other disposition is liable to avoidance or repayment.

12.14 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, FEDERAL LAW AND NOT THE LAW OF ANY STATE OR LOCALITY. TO THE EXTENT THAT A COURT LOOKS TO THE LAWS OF ANY STATE TO DETERMINE OR DEFINE THE FEDERAL LAW, IT IS THE INTENTION OF THE PARTIES HERETO THAT SUCH COURT SHALL LOOK ONLY TO THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

12.15 Submission to Jurisdiction, Etc.

(a) Any legal action or proceeding against the Borrower with respect to or arising out of this Agreement or any other Loan Document may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Borrower or any of its property may be found. By execution and delivery of this Agreement, the Borrower accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Agreement or any other Loan Document. The Borrower hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under or in connection with this Agreement or any other Loan Document brought before the foregoing courts on the basis of forum non-conveniens or improper venue. The Borrower agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) The Borrower hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 12.5 and that such mailing is sufficient to confer personal jurisdiction over the Borrower in any proceeding in any court referred to in Section 12.15(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 12.15 shall affect the right of DOE to serve process in any other manner permitted by law.

12.16 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding, and supersede all prior agreements and

understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

12.17 Benefits of Agreement. Nothing in this Agreement or any other Loan Document, express or implied, shall give to any Person, other than the parties hereto, FFB, each subsequent holder of any Note or any portion thereof and the Collateral Trustee (and, with respect to Section 12.8 only, the Indemnified Persons), and their respective successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Agreement.

12.18 Headings. Paragraph headings have been inserted in the Loan Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Loan Documents and shall not be used in the interpretation of any provision of the Loan Documents.

12.19 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

12.20 No Partnership; Etc. The Lender Parties and the Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or in any other Loan Document shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Lender Parties and the Borrower or any other Person. The Lender Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Borrower or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and expenses in connection with or arising from the ownership, operation or occupancy of any Project or any other assets of any Obligor and to perform all obligations under the agreements and contracts relating to any Project or any other assets of any Obligor shall be the sole responsibility of the Borrower.

12.21 Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, but without limiting the operation of Sections 6.15(c) and (d) of the Collateral Trust Agreement relating to certain automatic releases of Collateral and Subsidiary Obligations in connection with permitted Dispositions, DOE hereby agrees to take promptly any action reasonably requested by the Borrower, at the Borrower's expense, having the effect of releasing, or evidencing the release of, any Collateral or Subsidiary Obligations (including by instructing any Collateral Trustee to do so) (i) to the extent necessary to permit consummation of any Disposition of any Collateral or any Guarantor to the extent expressly permitted under Section 9.5, (ii) to the extent necessary to permit consummation of any transaction that has been consented to in accordance with Sections 12.1 or 12.2 or (iii) in the case of Collateral, under the circumstances described

in paragraph (b) below. For the avoidance of doubt any such action shall include directing the Collateral Trustee to take action under the Collateral Trust Agreement.

(b) At such time as the Advances, the Loans, the Reimbursement Obligations and all interest, fees and other amounts owing hereunder and under the other Loan Documents (other than unasserted contingent indemnity obligations under Section 12.8) shall have been paid in full and the Loan Commitment Amounts reduced to zero, the Secured Obligations shall cease to be "Secured Obligations" under the Collateral Trust Agreement and DOE shall provide notice to the Collateral Trustee thereof in accordance with Section 6.15(a) of the Collateral Trust Agreement.

12.22 Certain Waivers. Pursuant to the rights granted to DOE under Section 5.2 of the Program Financing Agreement, DOE hereby waives, on its behalf and on behalf of FFB, (a) any default arising out of a breach of any representation or warranty made by the Borrower pursuant to Article 8 of the Note Purchase Agreement and (b) so long as the Borrower is in compliance with the terms of Section 3.6(c)(vi), including the obligation to make a payment in an amount equal to the amount specified in Section 3.6(c)(vi), any Default or Event of Default arising from the failure of the Borrower to comply with the terms of Section 14(e) of Note P or Section 14(e) of Note S until the first Business Day after FFB delivers to the Borrower a notice setting forth the applicable Prepayment Price. For the avoidance of doubt, DOE does not, pursuant to this Section 12.22, waive any default arising out of a breach of any representation or warranty under any other Loan Document.

12.23 Independence of Covenants All covenants hereunder and under the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

12.24 Marshaling. Neither DOE nor FFB nor any other Secured Party shall be under any obligation to marshal any assets in favor of any Obligor or any other Person or against or in payment of any or all of the Secured Obligations.

12.25 Pro Rata Treatment. If FFB is not the sole holder of the Notes: each payment on account of any Note P Obligations or Note S Obligations, as the case may be, to or for the account of one or more of holders of (x) Note P in respect of Note P Obligations or (y) Note S in respect of Note S Obligations, due on a particular day shall be allocated among the respective holders of the Notes entitled to such payments based on their respective pro rata shares of the respective Notes and shall be distributed accordingly.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name: Lachlan W. Seward
Title: Director, Advanced Technology Vehicles Manufacturing Loan Program

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name: Lachlan W. Seward
Title: Director, Advanced Technology Vehicles Manufacturing Loan Program

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

Annex A

DEFINITIONS

"Acceptable Delivery Method" means, with respect to any certificate, document or other item required to be delivered by an Acceptable Delivery Method hereunder, (a)(i) transmission, by an Authorized Transmitter, of such certificate, document or other item in Electronic Format, together with the Transmission Code, and (ii) if, within two (2) Business Days of DOE's receipt of a transmission referred to in clause (i) above, DOE shall make a DOE Verification Request with respect to such transmission, the Borrower causing the recipient of such DOE Verification Request, or any other Authorized Transmitter other than the Authorized Transmitter that made such transmission, to verify the authenticity of such certificate, document or other item, (b) delivery of a manually executed original of such certificate, document or other item or (c) such other delivery method as the Borrower and DOE shall mutually agree.

"Action Plan" has the meaning given to such term in Section 2.9(c)(i)(A).

"Additional Guarantor" has the meaning given to such term in Section 7.6(a).

"Advance Date" means the date on which FFB makes any Advance to the Borrower.

"Advance Request" has the meaning given to such term in Section 2.3(a).

"Advance Request Approval Notice" means a notice substantially in the form included in Exhibit A to the Note Purchase Agreement, issued by DOE to FFB and the Borrower in accordance with, and subject to the fulfillment of the conditions in, Section 2.4(a)(ii).

"Advance Request Delivery Date" has the meaning given to such term in Section 2.3(a).

"Advances" has the meaning given to such term in Section 2.1(b).

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims) or other regulatory body or any arbitrator whether pending or, to the Knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Subsidiaries or any of their respective property.

"Affiliate" means, as applied to any Person, (x) any other Person directly or indirectly controlling, controlled by, or under common control with, that Person and (y) in addition, in the case of any Person that is an individual, each member of such Person's immediate family, any trusts or other entities established for the benefit of such Person or any member of such Person's immediate family and any other Person controlled by any of the foregoing. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any

Person, means the possession, directly or indirectly, of the power (i) to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"After Acquired Material Real Property" means (i) any individual fee-owned interest in any real property (wherever located) acquired by the Borrower or any of its Subsidiaries after the date hereof having a fair market value in excess of $1,000,000 as of any date of determination and (ii) any leasehold or other non-fee-owned interest in real property (wherever located) acquired by the Borrower or any of its Subsidiaries after the date hereof with respect to which the aggregate payments under the term of the lease or other agreement relating thereto exceed $1,000,000 per annum.

"Agreed-Upon Procedures Report" has the meaning given to such term in Section 8.2(c).

"Agreement" has the meaning given to such term in the preamble hereto.

"ALTA" means the American Land Title Association.

"Applicable Governmental Claims" has the meaning given to such term in Section 7.6(f)(iii).

"Applicable Quarter" has the meaning given to such term on Annex 9.1.

"Applicable Regulations" means the final regulations located at 10 C.F.R. Part 611 and any other applicable regulations from time to time promulgated by DOE under Section 136.

"Application" has the meaning given to such term in the preliminary statements.

"ASTM" means the American Society for Testing and Materials.

"ATVM Program" means the Advanced Technology Vehicles Manufacturing Incentive Program authorized by Section 136 and administered by DOE.

"Authorized Transmitter" means, with respect to delivery of documentation (i) to DOE, each of the individuals listed on the Authorized Transmitter Schedule attached as an exhibit to the Borrower Certificate (for Closing) dated the date hereof, delivered by the Borrower to DOE, as updated or modified to reflect (A) successors to such individuals and (B) with the consent of DOE (not to be unreasonably withheld), such other individuals in such other capacities as the Borrower may elect from time to time and (ii) to FFB, each of the individuals listed on the Certificate Specifying Authorized Borrower Officials.

"Availability Period" means the period from the Financial Closing Date to January 22, 2013.

"Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended from time to time.

"Bankruptcy Law" means each of the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

"beneficial ownership" and like terms have the meaning prescribed in and shall be determined pursuant to Rule 13d-3 of the Exchange Act.

"Blocked Account Control Agreement" means, with respect to the Dedicated Account or the Initial Debt Service Account, a blocked account control agreement substantially in the form of attached as Exhibit P hereto, or in such other form as shall satisfy the requirements of Section 2.12 or 2.13, as applicable, in a manner that is satisfactory to DOE, entered into with the bank or securities intermediary at which such account is maintained.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" has the meaning given to such term in the preamble hereto.

"Borrower Commitments" has the meaning given to such term in Section 2.8(b).

"Borrower Instruments" has the meaning given to such term in Section 3.2 of the Note Purchase Agreement.

"Borrower Project Payments" has the meaning given to such term in Section 2.8(b).

"Budgeted Project P Contingency Amount" has the meaning given to such term in Section 2.9(a).

"Budgeted Project S Contingency Amount" has the meaning given to such term in Section 2.9(a).

"Budgeted Total Costs" has the meaning given to such term in Section 2.9(a).

"Business Day" means any day on which FFB and the Federal Reserve Bank of New York are both open for business.

"Business Plan" has the meaning given to such term in Section 5.1(m)(vi), as the same may be revised from time to time with the approval of DOE in accordance with Section 8.2(b).

"CAEATFA" means the California Alternative Energy and Advanced Transportation Financing Authority.

"Capital Expenditure" means all expenditures that should be capitalized in accordance with GAAP, including all expenditures with respect to fixed or capital assets.

"Capital Lease Obligations" means, with respect to any Person, 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 personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital 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.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"Cash Equity" has the meaning given to such term in Section 2.8(c).

"Cash Equity Condition" has the meaning given to such term in Section 2.8(c).

"Cash Equivalents" means any of the following:

(i) marketable securities that are direct obligations of the United States (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) or obligations the timely payment of principal and interest of which is fully guaranteed by the United States, in each case maturing not more than 360 days from the date of the acquisition thereof;

(ii) marketable securities that are obligations issued by, or the timely payment of principal and interest is fully guaranteed by, any agency or instrumentality of the United States, the obligations of which are backed by the full faith and credit of the United States, in each case maturing not more than 360 days from the date of the acquisition thereof;

(iii) marketable securities that are direct obligations of any member of the European Economic Area, Switzerland or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, in each case maturing not more than 360 days from the date of the acquisition thereof and, at the time of acquisition thereof having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(iv) marketable securities that are general obligations issued by any state of the United States or any political subdivision thereof or any or any instrumentality thereof that is guaranteed by the full faith and credit of such state, in each case maturing not more than 360 days from the date of the acquisition thereof and, at the time of acquisition thereof having a credit rating of at least AA- (or the equivalent grade) by Moody's or Aa3 by S&P;

(v) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade)

by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 270 days from the date of acquisition thereof;

(vi) fully collateralized repurchase agreements with a term of not more than thirty (30) days for obligations of the type described in clause (i), (ii), (iii) or (iv) above and entered into with a financial institution satisfying the criteria described in clause (vii) below; and

(vii) for an investment period of no longer than ninety (90) days, demand deposits, time deposits, certificates of deposit or bankers' acceptances of any commercial bank that (x) is organized under the laws of the United States or any State thereof, or is the principal banking subsidiary of a bank holding company organized under the laws of the United States or any State thereof, any member of the European Economic Area, Switzerland or Japan, (y) is subject to supervision and examination by federal or state banking authorities and (z) has combined capital and surplus of at least $500,000,000;

(viii) shares of any money market mutual fund that (x) has at least ninety-five percent (95%) of its assets invested continuously in obligations of the type described in clauses (i) through (vii) and (y) has net assets of not less than $500,000,000; and

(ix) the Fidelity Funds, Government Fund, class three shares, CUSIP: 316175603.

With respect to any Foreign Subsidiary, "Cash Equivalents" shall also include any Investment substantially comparable to the foregoing but in the currency of the jurisdiction of organization of such Subsidiary, Euros or U.S. Dollars.

"Cash Investment Amount" means, with respect to any Investment, the aggregate consideration paid and payable (including the maximum amount of any consideration committed to be paid) in the form of cash or Cash Equivalents, measured at the time such Investment is made (it being understood that the Cash Investment Amount of such Investment is considered to remain the same after the time such Investment is made, irrespective of any amortization, any depreciation or any return, dividend or other distribution in respect of such Investment); provided, that any consideration in the form of cash or Cash Equivalents paid in respect of such Investment after the time such Investment is made (including any purchase price adjustments or payments made in respect of dissenters' rights), to the extent exceeding the amount of cash and Cash Equivalents payable (including the maximum amount of any consideration committed to be paid) at the time such Investment is made, shall be considered another Investment.

"CEQA" means the California Environmental Quality Act.

"Certificate Specifying Authorized Borrower Officials" has the meaning given to such term in the Note Purchase Agreement.

"C.F.R." means the Code of Federal Regulations.

"Change of Control" means, at any time, that any of the following events shall occur:

(a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), including any existing holder of Capital Stock of the Borrower, (i) shall have acquired, or have entered into a contract or agreement to acquire, directly or indirectly, beneficial or of record ownership of thirty-five percent (35%) or more (or, in the case of the Musk Group, fifty percent (50%) or more) on a fully diluted basis of the voting and/or economic interest in the outstanding Capital Stock of the Borrower (including for purposes of this clause (i) all Capital Stock of the Borrower owned beneficially or of record as of the Principal Instrument Delivery Date) or (ii) shall have obtained, or have entered into a contract or agreement to obtain, the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of the Borrower; or

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower shall cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) at any time prior to one year following Final Completion of Project S, the members of the Musk Group shall cease to beneficially own and control in the aggregate at least 65% of the fully diluted economic and voting interests in the outstanding Capital Stock of the Borrower beneficially owned or controlled in the aggregate by the members of the Musk Group on the date of this Agreement as set forth in the capitalization table attached to Schedule A-7 to the Information Certificate.

"Charter Amendment" means the amendment to the Certificate of Incorporation of the Borrower, substantially in the form of Exhibit N, for the purpose, among other things, of increasing the authorized numbers of shares of common stock, preferred stock and Series E Preferred Stock sufficient for the Warrants to be issued to DOE.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all property and assets of the Obligors, now owned or hereafter acquired, in which the Borrower or any Guarantor has granted a Lien pursuant to any Security Document.

"Collateral Access Agreement" means a Collateral Access Agreement substantially in the form of Exhibits J or K, as applicable, or such other form as DOE or the Collateral Trustee may approve in their sole discretion.

"Collateral Account" has the meaning given to such term in Section 3.1 of the Collateral Trust Agreement.

"Collateral Schedules" means the schedules included in that certain letter dated as of the date of this Agreement substantially in the form of Exhibit I-1, executed by the Obligors and accepted by DOE, including the Organizational Information Schedule, as such schedules may be amended or supplemented from time to time by one or more Collateral Supplements; *provided* that each other provision of this Agreement or any other Loan Document referring to the applicable schedules to the Collateral Schedules as an exception or qualification to such provision shall be construed to refer to the applicable schedules attached to the original version of the Collateral Schedules accepted by DOE on the date of this Agreement and not to any updated version of such schedules thereafter delivered pursuant to this Agreement unless DOE approves such updated schedules in its sole discretion.

"Collateral Supplement" means a Collateral Supplement, substantially in the form of Exhibit I-2, to be executed and delivered to DOE and the Collateral Trustee by the Obligors for the purpose of amending or supplementing the Collateral Schedules from time to time as contemplated by this Agreement and the Security Agreement.

"Collateral Trust Agreement" means the Collateral Trust Agreement to be executed and delivered by the Borrower, each Guarantor, the Collateral Trustee and the other parties named therein, substantially in the form of Exhibit F.

"Collateral Trustee" means Midland Loan Services, Inc., a Delaware corporation, in its capacity as trustee under the Collateral Trust Agreement, and any successor thereof under the Collateral Trust and, as the context may require, any co-trustee appointed pursuant to the terms of the Collateral Trust Agreement.

"Compliance Certificate" has the meaning given to such term in Section 8.1(d).

"Consolidated Adjusted EBITDA" has the meaning given to such term on Annex 9.1.

"Consolidated Current Assets" has the meaning given to such term on Annex 9.1.

"Consolidated Current Liabilities" has the meaning given to such term on Annex 9.1.

"Consolidated Fixed Charges" has the meaning given to such term on Annex 9.1.

"Consolidated Interest Expense" has the meaning given to such term on Annex 9.1.

"Consolidated Net Income" has the meaning given to such term on Annex 9.1.

"Consolidated Total Assets" means, at any date, the amount that would be set forth opposite the caption "total assets" (or any like caption) on a balance sheet prepared in conformity with GAAP on a consolidated basis for the Borrower and its Subsidiaries as at such date.

"Consolidated Total Debt" has the meaning given to such term on Annex 9.1.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control Agreement" means (i) in the case of the Dedicated Account and the Initial Debt Service Account, a Blocked Account Control Agreement and (ii) in case of any other deposit account or securities account, a control agreement, in form and substance reasonably satisfactory to DOE, entered into with the bank or securities intermediary at which such deposit account or securities account is maintained by any Obligor as required under the terms of Section 9.10 or the Security Agreement.

"Controlled Foreign Corporation" means a "controlled foreign corporation" as defined in the Code.

"Copyright Security Agreement" means the Notice of Grant of Security Interest in Copyrights to be executed and delivered by the Borrower, each applicable Guarantor, the Collateral Trustee and the other parties named therein, substantially in the form of Exhibit F to the Security Agreement.

"Correction by Commitment Condition" has the meaning given to such term in Section 2.9(c)(i).

"Corrective Plan" has the meaning given to such term in Section 2.9(c)(i).

"Currency of Denomination" has the meaning given to such term in Section 12.7.

"Current Ratio" has the meaning given to such term in Annex 9.1.

"Current Request" has the meaning given to such term in Section 2.12(f).

"Davis-Bacon Act" means 40 U.S.C. § 3141 *et seq.* and any applicable regulations promulgated thereunder.

"Debarment Regulations" means (i) the Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988), (ii) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400 - 9.409, and (iii) the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

"Dedicated Account" has the meaning given to such term in Section 2.12.

"Deer Creek Collateral Access Agreement" means a Collateral Access Agreement with respect to the Deer Creek Lease in such form as DOE may approve in its sole discretion.

"Deer Creek Lease" means that certain lease by and between The Board of Trustees of the Leland Stanford Junior University, as landlord, and the Borrower, as tenant, dated as of August 6, 2009.

"Default" means any of the events specified in Section 10.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Deferred Amount" has the meaning given to such term in Section 2.12(f).

"Deferred Request" has the meaning given to such term in Section 2.12(f).

"Designated Overrun Amounts" has the meaning given to such term in Section 2.12(e).

"Designated Overrun Subaccount" has the meaning given to such term in Section 2.12(b)(iii).

"Disposition" means, with respect to any property or assets, any sale, transfer, conveyance, lease, license or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the first anniversary of the Note S Stated Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock referred to in clause (a) above, in each case at any time prior to the first anniversary of the Note S Stated Maturity Date. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement shall be the maximum amount that the Borrower may become obligated to pay upon such maturity of, or pursuant to such redeemable provisions in respect of, such Disqualified Stock.

"DOE" has the meaning given to such term in the preamble hereto.

"DOE's Consultant" has the meaning given to such term in Section 2.11(a).

"DOE Verification Request" means each request by DOE for verification of the authenticity of any submission of a certificate, report, document or other item required to be delivered hereunder by an Authorized Transmitter of the Borrower pursuant to clause (a)(i) of the definition of "Acceptable Delivery Method".

"Domestic Subsidiary" means any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States.

"Drawstop Notice" has the meaning given to such term in Section 2.4(b)(i).

"Electronic Format" means an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required or such other format as shall be mutually agreed between the Borrower and DOE.

"Eligible Applicant" has the meaning given to such term in the Applicable Regulations.

"Eligible Costs" has the meaning given to such term in the Applicable Regulations.

"Eligible Progress Payment" means, with respect to any purchase of equipment by the Borrower the purchase price of which is eligible for funding as an Eligible Project Cost, any customary progress payments that the vendor of such equipment requires the Borrower to make in the ordinary course of business prior to the time that title to such equipment passes to the Borrower.

"Eligible Project" has the meaning given to such term in the Applicable Regulations.

"Eligible Project Costs" means Eligible Project P Costs and/or Eligible Project S Costs, as applicable.

"Eligible Project P Costs" means the Eligible Costs with respect to Project P.

"Eligible Project S Costs" means the Eligible Costs with respect to Project S.

"Elon Musk Trust" means the Elon Musk Revocable Trust dated July 22, 2003.

"Employee Benefit Plan" means, collectively, (i) all "employee benefit plans" (as defined in Section 3(3) of ERISA) including any Multiemployer Plans which are or at any time have been maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever made, or been obligated to make, contributions or with respect to which the Borrower or any ERISA Affiliate has incurred or is likely to incur any material liability or obligation, (ii) all Pension Plans, and (iii) all Qualified Plans.

"Environmental Claim" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, notices of noncompliance or violation, investigations, proceedings, clean-up, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Environmental Law or any Governmental Approval issued under any such Environmental Law including (a) any and all Indemnity Claims by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other

actions or damages pursuant to any applicable Environmental Law, and (b) any and all Indemnity Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances, the violation or alleged violation of any Environmental Law or Governmental Approval issued thereunder, or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating or imposing liability or standards of conduct concerning protection of human health or safety, the environment or natural resources, as now or may at any time hereafter be in effect.

"Equity Offering" has the meaning given to such term in Section 9.27(c).

"Equity Owner" means, with respect to any Person, another Person holding Capital Stock in such first Person.

"Equity Proceeds Subaccount" has the meaning given to such term in Section 2.12(b)(i).

"ERISA" means Title IV of the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate", means, as applied to any person (as defined in Section 3(9) of ERISA), means (a) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that person is a member; (b) any trade or business (whether or not incorporated) that is a member of a group of trades or business under common control within the meaning of Section 414(c) of the Code or Section 4001(b) of ERISA of which that person is a member; (c) any member of an affiliated service group within the meaning of Section 414(m) and (o) of the Code of which that person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

"ERISA Event" means (a) the Borrower or any of its Affiliates adopts or sponsors any Pension Plan; (b) the Borrower or any ERISA Affiliate, incurs any liability or undertakes an obligation to pay or provide post-retirement welfare benefits to current or former employees other than as required by Law, including pursuant to the Consolidated Omnibus Budget Reconciliation Act or any similar state law; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) an event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"Event of Default" means any of the events specified in Section 10.1, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Event of Force Majeure" means an unforeseeable event beyond the control and without the fault of the Borrower or any Subsidiary, arising from any act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot or civil commotion.

"Event of Loss" means any event that causes any portion of any Project or any other property of the Borrower or any Subsidiary to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including without limitation through a failure of title or any loss of such property, resulting in a loss in excess of $5,000,000.

"Excess Advance Amount" means, on any date of determination with respect to each Advance under any Note, an amount equal to the total proceeds of such Advance that were not applied by the Borrower to pay, or be reimbursed for, Eligible Project Costs relating to the Project for which such Advance was sought as set forth in the most recent Agreed-Upon Procedures Report (other than any such proceeds which have not yet been applied within the applicable 30-day period contemplated by Sections 2.3(b)(v) and 5.3(h) and (k), *provided* that any such proceeds not so applied within such period shall be taken into account as an Excess Advance Amount on the next date of determination).

"Excess Cost Overrun" has the meaning given to such term in Section 2.9(c)(i).

"Excess Cost Overrun Cure" has the meaning given to such term in Section 2.9(d).

"Excess Equity Proceeds Amount" means, at any time of determination, an amount equal to:

(a) the aggregate amount of proceeds received in the form of cash or Cash Equivalents by the Borrower during the period from the closing of a Qualified IPO to such time of determination from the sale or issuance of its Capital Stock (other than Disqualified Stock), *less*

(b) the sum of (i) the aggregate amount of such proceeds required to be deposited into the Equity Proceeds Subaccount of the Dedicated Account pursuant to Section 2.12(e) *plus* (ii) the aggregate amount of all attorneys' fees, accountants' fees, underwriting discounts and commissions, other investment banking fees and other fees and expenses actually incurred in connection with such sales or issuances of Capital Stock *plus* (iii) the aggregate Cash Investment Amount of all other Permitted Equity Proceeds Investments that have been made by such time of determination.

"Excess Loan Amount" has the meaning given to such term in Section 3.6(c)(iv).

"Excess Project Loan Amount" has the meaning given to such term in Section 3.6(c)(iii).

"Exercise Price" has the meaning given to such term in the Warrants.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended.

"Excluded Accounts" means (i) Permitted Restricted Deposits, (ii) deposit accounts and securities accounts with a balance at all times of less than $250,000 individually and less than $1,000,000 for all such accounts so long as no other Person has a Lien (other than pursuant to Section 9.3(i)) or a control agreement on any such account, (iii) payroll accounts with a balance not to exceed the amount of actual compensation reasonably expected to be paid to employees within two (2) Business Days and any amounts required by law to be withheld from such compensation so long as no other Person has a Lien (other than pursuant to Section 9.3(i)) or a control agreement on any such account and (iv) any escrow or other segregated accounts required by law to be maintained in the ordinary course of business and to be unencumbered by any Liens and not available for working capital.

"Excluded Property" means any of the following if and only to the extent not constituting Program Assets:

(a) any lease, license, contract, property rights or agreement to which any Obligor is a party, any of its rights or interests thereunder or any Trademark if and for so long as the grant of a security interest therein shall constitute or result in (i) the abandonment, cancellation, invalidation or unenforceability of any right, title or interest of any Obligor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity), *provided, however*, that the Collateral shall include and such security interest shall attach immediately at such time as the condition causing such abandonment, cancellation, invalidation ,unenforceability, breach, termination or default shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights, agreement or Trademark that does not result in any of the consequences specified in clause (i) or (ii) above;

(b) that portion of the outstanding Capital Stock of a Foreign Subsidiary that is not required to be pledged pursuant to Section 7.6;

(c) any Permitted Restricted Deposits;

(d) any property (other than Capital Stock of Subsidiaries and other than any property required for the design, construction and operation of the Projects or for producing products in connection with the Projects as contemplated by the Business Plan) held by any Grantor at a location outside the United States if and for so long as the grant of such security interest is prohibited by any applicable Requirements of Law of a jurisdiction other than the United States or any state or other subdivision thereof; and

(e) Equipment subject to a Lien permitted under Section 9.3(h) if and for so long as the grant of such security interest shall constitute or result in a breach or termination pursuant to the terms of, or a default under, the documents governing such Lien, *provided, however*, that the Collateral shall include and such security interest shall attach immediately at such time as the condition causing such breach, termination or default shall no longer be in effect.

For the avoidance of doubt, it is understood that "Excluded Property" shall not include any proceeds of Excluded Property unless such proceeds constitute Excluded Property described in clause (a) or (b) of this definition.

"Facility Fee" means, collectively, the Project P Facility Fee and the Project S Facility Fee.

"Federal Funding" means any funds obtained from the United States or any agency or instrumentality thereof, including any loans or equity investments under the Troubled Assets Relief Program or funding under any other grant or loan program.

"FFB" means the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury.

"FFB Advance Request" has the meaning given to such term in Section 2.3(a).

"Final Completion" means, with respect to either Project, the occurrence of all of the following events to the satisfaction of DOE: (a) final completion of construction, installation and development of such Project, including all punch list items, in accordance with the Business Plan such that the applicable Project is fully operational, free and clear of any and all liens and claims of any Persons furnishing material, labor or services in connection therewith; (b) the payment in full of any and all Total Project P Costs or Total Project S Costs, as applicable, including any retainage and other amounts that, as of the date of Final Completion, are being withheld from any contractor or subcontractor or supplier and the payment of all permitting fees, licensing fees and other governmental charges payable in connection therewith; (c) the issuance of a permanent certificate of occupancy for the Project and the issuance of all other governmental licenses, permits, sign-offs and approvals required to have been obtained for the lawful construction substantially in accordance with the Business Plan and necessary for its lawful use; (d) the delivery of final, unconditional lien waivers from all parties required by DOE in form and content reasonably acceptable to DOE; and (e)(i) with respect to Project P, the Borrower having the capability to produce Project P powertrain components at monthly volume levels consistent with the Business Plan, and (ii) with respect to Project S, the Borrower having the capability to produce Model S vehicles at a production rate based on a single shift, consistent with the Business Plan.

"Final True-Up Advance" means the Project P Final True-Up Advance or the Project S Final True-Up Advance, as applicable.

"Financial Closing Date" means the earlier to occur of (a) the date on which FFB delivers an acceptance notice pursuant to Section 5.2 to purchase each Note pursuant to the terms of the Note Purchase Agreement and (b) the making by FFB of the first Advance under the Notes.

"Financial Statements" means, for any period, the balance sheet of the Borrower and its Subsidiaries as at the end of such period and the related statements of income, stockholders' equity and cash flows for such period and for the period from the beginning of the then current Fiscal Year to the end of such period, together with all notes thereto and with comparable figures for the corresponding period of the previous Fiscal Year, each prepared in accordance with GAAP, subject, in the case of unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments and, in the case of monthly Financial Statements, normal quarter-end adjustments.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that (a) such Lien has been validly created and perfected under all applicable Requirements of Law (other than foreign laws unless Section 7.6 requires perfection under foreign laws with respect to a particular asset), (b) such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien, and (c) such Lien is the most senior Lien on such Collateral other than (i) Liens permitted under Section 9.3(b) solely on the assets identified in the schedule referred to therein (other than any Program Assets), (ii) non-consensual Liens permitted under Section 9.3(c), (iii) Liens permitted under Section 9.3(d) on tangible property (other than any Program Assets except to the extent contemplated by Section 5.3(n)), and (iv) Liens permitted under any of Sections 9.3(e) through (j), (l), (n), (p), (r) and (s) solely on the assets referred to in such Section (other than any Program Assets).

"First-Tier Foreign Subsidiary" means a Foreign Subsidiary that is owned directly by the Borrower and/or one or more Guarantors.

"Fiscal Year" means the accounting year of the Borrower commencing each year on January 1st and ending on December 31st or such other period agreed in writing between the Borrower and DOE.

"Fixed Charge Coverage Ratio" has the meaning given to such term on Annex 9.1.

"FOIA" means the Freedom of Information Act, 5 U.S.C. § 552, and the regulations promulgated, and any publicly available rulings issued, thereunder.

"Follow-On Equity Offering" has the meaning given to such term in Section 9.27(a)(iii).

"Forecasted Total Costs" has the meaning given to such term in Section 2.9(a).

"Foreign Subsidiary" means any Subsidiary of the Borrower that is not a Domestic Subsidiary.

"Form of Advance Request" has the meaning given to such term in Section 2.3(a).

"Form of FFB Advance Request" the meaning given to such term in Section 2.3(a)

"Forms Supplement" has the meaning given to such term in Section 5.1(w).

"Funding Agreements" has the meaning given to such term in Section 5.1(a)(ii).

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.5, generally accepted accounting principles in the United States as in effect from time to time.

"Governmental Approval" means any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority, including any of the foregoing that are or may be deemed given or withheld by failure to act within a specified time period.

"Governmental Authority" means, with respect to any Person, any federal, state, municipal, national or other government, any political subdivision, department, commission, board, bureau, agency or instrumentality thereof, any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Guarantee" means the Guarantee to be executed and delivered to DOE by each Guarantor, substantially in the form of Exhibit D.

"Guarantor" means each Subsidiary that becomes a party to the Guarantee on or after the Principal Instrument Delivery Date pursuant to Sections 5.1(a)(iii) or 7.6(a) or (b) or otherwise.

"Hazardous Substance" means any hazardous or toxic substances, chemicals, materials, pollutants or wastes defined, listed, classified or regulated as such in or under any Environmental Laws, including without limitation (i) any petroleum or petroleum products (including without limitation gasoline, crude oil or any fraction thereof), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls; (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other chemical, material or substance, import, storage, transport, use or disposal of, or exposure to or Release of which is prohibited, limited or otherwise regulated under any Environmental Law.

"Hedging Transaction" means any transaction (including an agreement with respect thereto) which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures; *provided* that the following shall be excluded from this definition: (i) any stock options or warrants issued to, or phantom stock plans, stock appreciation rights plans or similar plans providing for payments to, directors, officers, employees or consultants of the Borrower or its Subsidiaries as compensation for services provided in the ordinary course of business otherwise permitted by this Agreement and (ii) any customary agreement for the settlement in the ordinary course of business of the sale of Capital Stock otherwise permitted by this Agreement.

"Historical Costs" has the meaning given to such term in Section 2.7(b)(iii).

"Historical Costs Assumption" has the meaning given to such term in Section 2.7(b)(i).

"Historical Financial Statements" means as of the Principal Instrument Delivery Date, (i) the audited consolidated and consolidating Financial Statements of the Borrower and its Subsidiaries, for the Fiscal Year ended December 31, 2008, and (ii) for the interim period from January 1, 2009 to the Principal Instrument Delivery Date, internally prepared, unaudited Financial Statements of the Borrower and its Subsidiaries for each quarterly period completed prior to twenty (20) days before the Principal Instrument Delivery Date and for each monthly period completed prior to twenty (20) days prior to the Principal Instrument Delivery Date.

"Historical Principles" has the meaning given to such term in Section 1.5.

"Indebtedness" means, with respect to any Person, any liability, whether or not contingent, in respect of:

(a) borrowed money (whether by loan, the issuance and sale of debt securities or the sale of assets to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such assets from such Person, in each case whether or not the recourse of the lender or purchaser is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments;

(b) the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith);

(c) all Capital Lease Obligations;

(d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any Indebtedness or other obligations of another Person, including, without limitation, any such Indebtedness or other obligations, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such Indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition;

(e) all Disqualified Stock issued by such Person;

(f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account;

(g) all indebtedness of such Person in respect of Indebtedness of another Person for borrowed money or Indebtedness or obligations of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such Indebtedness or obligations are assumed by or are a personal liability of such Person, all as of such time;

(h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under Hedging Transactions;

(i) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with generally accepted accounting principles; and

(j) obligations of general partnerships of which such Person is a general partner unless the terms of such obligations expressly provide that such Person is not liable therefor.

"Indemnified Liability" has the meaning given to such term in Section 12.8(a).

"Indemnified Person" has the meaning given to such term in Section 12.8(a).

"Indemnity Claims" has the meaning given to such term in Section 12.8(a).

"Independent Auditor" means PriceWaterhouseCoopers, or any other successor independent certified public accounting firm appointed by the Borrower, subject to the approval of DOE (such approval not to be unreasonably withheld).

"Information Certificate" means the Information Certificate executed by the Borrower and submitted to DOE on June 23, 2009, as updated in accordance with Section 5.1(e).

"Initial Contribution" has the meaning given to such term in Section 2.9(c)(ii)(A).

"Initial Debt Service Account" has the meaning given to such term in Section 2.13(a).

"Initial Debt Service Payment Date" has the meaning given to such term in Section 2.13(c).

"Initial Debt Service Requirement" has the meaning given to such term in Section 2.13(c).

"Initial Debt Service Withdrawal Request" has the meaning given to such term in Section 2.13(a).

"Insolvency Proceeding" means any one or more of the following under any applicable Requirements of Law, in any jurisdiction and whether voluntary or involuntary: (i) any bankruptcy, insolvency, liquidation, company reorganization, restructuring, controlled management, suspension of payments or scheme of arrangement with respect to the Borrower or any of its Subsidiaries; (ii) any appointment of a provisional or interim liquidator, receiver, trustee, administrative receiver or other custodian for all or any substantial part of the property of the Borrower or any of its Subsidiaries; (iii) any notification, resolution or petition for winding up or similar proceeding with respect to the Borrower or any of its Subsidiaries; or (iv) any issuance of a warrant or attachment, execution or similar process against all or any substantial part of the property of the Borrower or any of its Subsidiaries.

"Intellectual Property" means all rights, priorities and privileges with respect to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including any of the following, as they exist anywhere in the world, whether registered or unregistered and including all registrations, issuances and applications therefor (whether or not any such applications are modified, withdrawn, abandoned or resubmitted) and all extensions and renewals thereof: (a) patents, certificates of invention, patentable inventions and other patent or similar industrial property rights (including any divisions, continuations, continuations-in-part, extensions, reissues, reexaminations and interferences thereof); (b) Trademarks; (c) copyrights, Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act) and designs, including computer software programs, databases and compilations and all source code, object code, data and documentation related thereto; (d) trade secrets, know-how, inventions, processes, procedures, databases, concepts, ideas, research or development information, techniques, technical information and data, specifications, methods, discoveries, modifications, extensions, customer lists, personally-identifiable information, confidential information and other proprietary information and rights, in each case, whether or not reduced to a writing or other tangible form (collectively, "Trade Secrets"); and (e) domain names, Internet addresses and other computer identifiers.

"Intended Prepayment Date" has the meaning given to such term in the relevant Note.

"Interim True-Up Advance" has the meaning given to such term in Section 2.12(f).

"Interim True-Up Advance Request" has the meaning given to such term in Section 2.12(i).

"Interim True-Up Subaccount" has the meaning given to such term in Section 2.12(b)(ii).

"Investments" has the meaning given to such term in Section 9.4.

"Investment Amount" means, with respect to any Investment, the aggregate cash and non-cash consideration paid and payable (including the maximum amount of any consideration committed to be paid), measured at the time such Investment is made (it being understood that the Investment Amount of such Investment is considered to remain the same after the time such Investment is made, irrespective of any amortization, any depreciation or any return, dividend or other distribution in respect of such Investment); *provided*, that (i) non-cash consideration shall include all types of direct and indirect consideration, including (A) Capital Stock and other assets and (B) assumed Indebtedness and other assumed liabilities; (ii) any asset constituting non-cash consideration shall be valued at its fair market value (determined by the Borrower acting in good faith) at the time such Investment is made and any assumed liability shall be valued at its face amount; and (iii) any cash or non-cash consideration paid in respect of such Investment after the time such Investment is committed to be made (including any purchase price adjustments or payments made in respect of dissenters' rights), to the extent exceeding the amount of cash and non-cash consideration payable (including the maximum amount of any consideration committed to be paid) at the time such Investment is made, shall be considered another Investment.

"Investment Company Act" means the United States Investment Company Act of 1940.

"Investment Earnings Subaccount" has the meaning given to such term in Section 2.12(b)(iv).

"IP Schedules" means, collectively, all Collateral Schedules relating to Intellectual Property, as such schedules may be amended or supplemented from time to time by one or more Collateral Supplements.

"IPO" means the first Equity Offering that is a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act.

"Judgment Currency" has the meaning given to such term in Section 12.7.

"Knowledge" means, with respect to the Borrower or any Subsidiary, the actual knowledge of the Principal Persons or any knowledge which should have been obtained by any of the Principal Persons upon reasonable investigation and inquiry.

"Late Charge" has the meaning given to such term in the relevant Note.

"Late Charge Rate" has the meaning given to such term in the relevant Note.

"Lender Party" means each of DOE, FFB, any subsequent holder or holders of any Note or any portion of any Note and the Collateral Trustee.

"Lender Party Force Majeure Event" has the meaning given to such term in Section 2.4(c)(iii).

"Lien" means any lien, mortgage, pledge, assignment, license, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"Limited Cash Equivalents" means any of the following:

(i) (x) marketable securities that are direct obligations of the United States (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) or obligations the timely payment of principal and interest of which is fully guaranteed by the United States, in each case maturing not more than ninety (90) days from the date of the acquisition thereof by (or on behalf of) the Borrower or its Subsidiaries; or (y) marketable securities that are obligations issued by, or the timely payment of principal and interest is fully guaranteed by, any agency or instrumentality of the United States, the obligations of which are backed by the full faith and credit of the United States, in each case maturing not more than 360 days from the date of acquisition thereof by (or on behalf of) the Borrower or its Subsidiaries; *provided* that with respect to any single agency or instrumentality, the investments permitted under clause (i)(y) shall at no time exceed 5% of the aggregate amount at any time invested in Limited Cash Equivalents;

(ii) shares of any money market mutual fund that (x) has at least ninety-five percent (95%) of its assets invested continuously in obligations of the type described in clause (i), (y) has net assets of not less than $500,000,000 and (z) has the highest rating obtainable from S&P and Moody's;

(iii) fully collateralized repurchase agreements with a term of not more than thirty (30) days for obligations of the type described in clause (i) above and entered into with a financial institution satisfying the criteria described in clause (iv) below; and

(iv) for an investment period of no longer than thirty (30) days, demand deposits of any commercial bank that (x) is organized under the laws of the United States or any State thereof, (y) is subject to supervision and examination by federal or state banking authorities and (z) has the highest rating obtainable from S&P and Moody's; and

(v) the Fidelity Funds, Government Fund, class three shares, CUSIP: 316175603.

"Loan Commitment Amount" means, in the aggregate, the sum of the Project P Loan Commitment Amount *plus* the Project S Loan Commitment Amount.

"Loan Document Amounts" means any amounts payable or allegedly payable by the Borrower to FFB under any provision of any Loan Document, other than Section 4.1.

"Loan Documents" means, collectively, this Agreement, the Funding Agreements, the Guarantee, the Security Documents, the Warrants, the Registration Rights Agreement, the Subordination Agreement, the Information Certificate, each Subsidiary Joinder Agreement and all other certificates, documents, instruments or agreements executed and delivered by an Obligor for the benefit of any Lender Party in connection herewith.

"Loans" has the meaning given to such term in Section 2.1(a)(ii).

"Los Angeles Property" means the Los Angeles location identified in Schedule B-3 to the Information Certificate under the heading "Future Project Locations".

"Mandatory Prepayment" means the prepayment of any outstanding Loans, in whole or in part, pursuant to Section 3.6(c).

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, condition (financial or otherwise) or results of operations of the Borrower or any of its Subsidiaries, taken as a whole, (b) the intended use of the proceeds of the Loans, (c) the value of the Collateral, (d) the validity or enforceability of this Agreement, any of the Notes or the other Transaction Documents or (d) the rights and remedies of any Lender Party hereunder or thereunder.

"Material Contract" means, with respect to any Person, any contract or other agreement, written or oral, of such Person involving monetary liability of or to any party thereto in an amount in excess of $500,000 in any fiscal year and any other contract or other agreement, whether written or oral, to which such Person is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

"Maximum Qualifying Investment Amount" means, at any time of determination, an amount equal to the excess of (A) an amount equal to 20% of Consolidated Total Assets as of the last day of the Borrower's then most recently completed fiscal quarter (including the fourth (4th) fiscal quarter) of the Borrower for which Financial Statements and a related Compliance Certificate have been furnished to DOE in accordance with Sections 8.1(b) and 8.1(d) over (B) the aggregate Investment Amount of all other Permitted Equity Proceeds Investments that have been made or committed to be made during the period from the end of such fiscal quarter to such time of determination.

"Maximum Total Loan Amount" means the lesser of (a) $465,047,000 and (b) the sum, as of any date of determination, of (i) the Project P Maximum Loan Amount ***plus*** (ii) the Project S Maximum Loan Amount.

"Measurement Date" has the meaning given to such term in Section 2.9(a).

"Milestone" has the meaning given to such term in Section 5.1(m)(i).

"Milestone Completion Date" has the meaning given to such term on Section 5.1(m)(i).

"Monthly Calculation Date" means the last day of each fiscal month of the Borrower.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means a mortgage (including, a leasehold mortgage), deed of trust or deed to secure debt, in form and substance satisfactory to DOE in its sole discretion, made by the Borrower or any Guarantor in favor of, or for the benefit of, the Collateral Trustee for the benefit of the Secured Parties, creating on the real property of the Borrower or any of its Subsidiaries, as applicable, a First Priority Lien.

"Musk Group" means, collectively, (i) Elon Musk, (ii) the Elon Musk Trust, for so long as Elon Musk shall control the Elon Musk Trust or have beneficial ownership of the Capital Stock held by the Elon Musk Trust or (iii) any "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) that includes Elon Musk.

"Multiemployer Plan" means a "multiemployer plan" (within the meaning of Section 3(37) or Section 4001(a)(3) of ERISA) which the Borrower or any ERISA Affiliate contributes to or participates in, or with respect to which the Borrower or any ERISA Affiliate has or in the past has had any material liability or other obligation (whether accrued, absolute, contingent or otherwise).

"NEPA" means the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and all regulations promulgated thereunder, as either is amended or modified from time to time.

"Net Budgeted Total Costs" has the meaning given to such term in Section 2.9(a).

"Net Cash Proceeds" means (i) the gross cash proceeds (including payments from time to time in respect of promissory notes or installment or deferred obligations, if applicable, and cash equivalents) received less (ii) the sum of: (w) the amount, if any, of all taxes paid or estimated in good faith to be payable by the Borrower or any Subsidiary in connection with such transaction (after taking into account any available tax credits or deductions), (x) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to clause (w) above) (1) associated with the assets that are the subject of such transaction and (2) retained by the Borrower or any Subsidiary, *provided* that upon release of any such reserve, the amount released shall be considered Net Cash Proceeds

except to the extent used to pay such liabilities, (y) the amount of any Indebtedness secured by a Lien on the assets that are the subject of the transaction to the extent that the instrument creating or evidencing such Indebtedness requires that such Indebtedness be repaid upon consummation of such transaction (but excluding the Loans), and (z) bona fide fees and expenses directly attributable to the transaction (other than if payable to an Affiliate of the Borrower).

"Net Forecasted Total Costs" has the meaning given to such term in Section 2.9(a).

"Net Offering Proceeds" means, with respect to any Equity Offering, the proceeds from such Equity Offering net of underwriting discounts and commissions and reasonable and customary offering fees and expenses.

"Net Remaining Uncommitted Costs" has the meaning given to such term in Section 2.9(a).

"Non-Guarantor Subsidiary" means any Subsidiary of the Borrower that is not a Guarantor.

"Note Installment" means either a Note P Installment or a Note S Installment, as applicable.

"Note P" means the promissory note to be issued by the Borrower, substantially in the form of Exhibit A, in favor of FFB to induce FFB to advance funds thereunder to the Borrower, as such note may be amended, supplemented and restated from time to time in accordance with its terms.

"Note P Installment" has the meaning given to such term in Section 3.3(b)(i).

"Note P Obligations" means, collectively, the unpaid principal of and interest on Advances made under Note P and Note P Reimbursement Obligations and all other obligations and liabilities of the Borrower (including interest accruing at the then applicable rate provided in the Funding Agreements after maturity of the relevant Advances and Reimbursement Obligations and Post-Petition Interest) to DOE or FFB or any subsequent holder or holders of such Note (or any portion thereof), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, the Guarantee, Note P, the Note Purchase Agreement, the Program Financing Agreement, the Security Documents, or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, prepayment premiums, indemnities, costs, expenses or otherwise (including all fees and Advances made with respect to Note P of DOE or FFB or any subsequent holder or holders of such Note (or any portion thereof) that are required to be paid by the Borrower or any of the Guarantors pursuant to the terms of any of the foregoing agreements). For clarity, the Note P Obligations shall not include any obligations arising under the Warrants, the Registration Rights Agreement or related documents.

"Note P Reimbursement Obligations" means any Reimbursement Obligations of the Borrower or any Guarantor to DOE arising under, out of, pursuant to or in connection with Note P.

"Note P Secured Obligations" shall mean, without duplication, (i) all Note P Obligations and (ii) all Subsidiary Obligations relating to any Note P Obligations, *provided, however*, that to the extent any payment with respect to the Note P Obligations (whether by or on behalf of the Borrower or any Subsidiary that is from time to time a party to the Collateral Trust Agreement, as proceeds of the Collateral, enforcement of any right of set off or otherwise) is declared to be fraudulent or preferential in any respect, set aside or required to be paid to a debtor in possession, trustee, receiver or similar Person, then the obligations or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

"Note P Stated Maturity Date" means September 15, 2019.

"Note Purchase Agreement" means the Note Purchase Agreement, dated as of January 20, 2010, among the Borrower, the Secretary of Energy and FFB.

"Note S" means the promissory note to be issued by the Borrower, substantially in the form of Exhibit B, in favor of FFB to induce FFB to advance funds thereunder to the Borrower, as such note may be amended, supplemented and restated from time to time in accordance with its terms.

"Note S Installment" has the meaning given to such term Section 3.3(b)(2).

"Note S Obligations" means, collectively, the unpaid principal of and interest on Advances made under Note S and Note S Reimbursement Obligations and all other obligations and liabilities of the Borrower (including interest accruing at the then applicable rate provided in the Funding Agreements after maturity of the relevant Advances and Reimbursement Obligations and Post-Petition Interest) to DOE or FFB or any subsequent holder or holders of such Note (or any portion thereof), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, the Guarantee, Note S, the Note Purchase Agreement, the Program Financing Agreement, the Security Documents, or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, prepayment premiums, indemnities, costs, expenses or otherwise (including all fees and Advances made with respect to Note S of DOE or FFB or any subsequent holder or holders of such Note (or any portion thereof) that are required to be paid by the Borrower or any of the Guarantors pursuant to the terms of any of the foregoing agreements). For clarity, the Note S Obligations shall not include any obligations arising under the Warrants, the Registration Rights Agreement or related documents.

"Note S Reimbursement Obligations" means any Reimbursement Obligations of the Borrower or any Guarantor to DOE arising under, out of, pursuant to or in connection with Note S.

"Note S Secured Obligations" shall mean, without duplication, (i) all Note S Obligations and (ii) all Subsidiary Obligations relating to any Note S Obligations, *provided, however*, that to the extent any payment with respect to the Note S Obligations (whether by or on behalf of the Borrower or any Subsidiary that is from time to time a party to the Collateral Trust Agreement, as proceeds of the Collateral, enforcement of any right of set off or otherwise) is declared to be fraudulent or preferential in any respect, set aside or required to be paid to a debtor in possession, trustee, receiver or similar Person, then the obligations or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

"Note S Stated Maturity Date" means September 15, 2022.

"Notes" means each of Note P and Note S.

"Obligor" means the Borrower and each Guarantor.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Opinion of Borrower's Counsel re: Borrower Instruments" has the meaning given to such term in the Note Purchase Agreement.

"Organizational Documents" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Organizational Information Schedule" means the Collateral Schedule entitled "Organizational Informational Schedule", as such schedule may be amended or supplemented from time to time by one or more Collateral Supplements.

"Paid or Committed Costs" has the meaning given to such term in Section 2.9(a).

"Patent Security Agreement" means the Notice of Grant of Security Interest in Patents to be executed and delivered by the Borrower, each applicable Guarantor, the Collateral Trustee and the other parties named therein, substantially in the form of Exhibit D to the Security Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever made, or was obligated to make, contributions or has or could have any liability, and (ii) that is or was subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA.

"Permitted Acquisition" means a Qualifying Investment of the type referred to in clause (a) or (b) of the definition thereof that is permitted by Section 9.4.

"Permitted Correction" has the meaning given to such term in Section 2.9(c)(ii)(B).

"Permitted Equity Proceeds Investments" has the meaning given to such term in Section 9.4(m).

"Permitted Indebtedness" has the meaning given to such term in Section 9.2.

"Permitted Liens" has the meaning given to such term in Section 9.3.

"Permitted Overruns" has the meaning given to such term in Section 2.9(c)(ii).

"Permitted Restricted Deposits" means (a) any restricted deposit specifically identified as of the Principal Instrument Delivery Date in Schedule C to the Collateral Schedules and (b) any other deposit subject to a Lien permitted by Section 9.3(f) or (q) that is created pursuant to an agreement that restricts the granting of other Liens on such deposit.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Plans" means, with respect to any Person, all Employee Benefit Plans, Multiemployer Plans, Qualified Plans and any other employee benefit plans, programs and arrangements, whether or not subject to ERISA, including pension, retirement, deferred compensation, bonus, incentive, profit-sharing, change-in-control, stock option or other stock- or equity-related compensation, vacation, health and welfare benefits or insurance (including self-insured arrangements), workers' compensation, supplemental unemployment benefits, and other post employment benefits maintained, sponsored or contributed to by (or required to be contributed to by) such Person currently or in the past six (6) years or with respect to which such Person has or could reasonably be expected to have any liability.

"Post-Petition Interest" means all interest (or entitlement to fees or expenses or other charges) accruing or that would have accrued after the commencement of any Insolvency Proceeding, irrespective of whether a claim for post-filing or petition interest (or entitlement to fees or expenses or other charges) is allowed in any such Insolvency Proceeding.

"Pre-IPO Equity Offering" has the meaning given to such term in Section 9.27(a)(i).

"Prepayment Election Notice" has the meaning given to such term in the relevant Note.

"Prepayment Price" has the meaning given to such term in the relevant Note.

"Principal Instrument Delivery Date" means the date on which the conditions precedent set forth in Section 5.1 shall have been satisfied or waived, in each case in the sole discretion of DOE, and DOE delivers the Principal Instruments to FFB.

"Principal Instruments" means each of the documents or instruments required to be delivered by the Secretary pursuant to Section 4.2 of the Note Purchase Agreement.

"Principal Persons" means any officer, director, owner, key employee or other Person with primary management or supervisory responsibilities with respect to the Borrower, any Subsidiary or any Project.

"Pro Forma Basis" means, with respect to any Investment, that for purposes of calculating the financial covenants specified in Annex 9.1, such Investment shall be deemed to have occurred as of the first day of the four fiscal quarter period most recently completed prior to the date such Investment is made for which period Financial Statements and a related Compliance Certificate have been furnished to DOE in accordance with Section 8.1(b) or (c) and Section 8.1(d), as applicable, on an annualized basis for the Person or property acquired through such Investment by using the results of the most recent two consecutive fiscal quarters for which financial statements are available for such Person or attributable to such property multiplied by two. In connection with the foregoing, (i) income statement items (whether positive or negative) attributable to the Person or property acquired and relating to such period shall be included in such calculations except to the extent such items are otherwise included in such income statement items for the Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Annex A or Annex 9.1 or are expressly excluded in accordance with Annex 9.1 and (ii) any Indebtedness incurred or assumed by the Borrower or any Subsidiary (including the Person or property acquired) in connection with such Investment and any Indebtedness or other obligations of the Person or property acquired which is not retired in connection with such Investment (x) shall be deemed to have been incurred as of the first day of such period and (y) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

"Program Assets" means, as of any date, all assets which have been financed or acquired with (or the cost of which has been reimbursed to the Borrower with) the proceeds of Advances made on or prior to such date and all assets the cost of which supports the requirements of Section 5.3(j) with respect to such Advances.

"Program Financing Agreement" means the Program Financing Agreement, dated as of September 16, 2009, between FFB and the Secretary of Energy.

"Program Requirements" means Section 136 and the Applicable Regulations.

"Prohibited Jurisdiction" means any country or jurisdiction, from time to time, that is the subject of sanctions or restrictions promulgated or administered by any Governmental Authority of the United States.

"Prohibited Person" means any Person:

(a) that is named, or is owned or controlled by, or, where applicable, acting for or on behalf of, any person or entity that is named on, the most current list of "Specially Designated Nationals and Blocked Persons" (Appendix A to 31 C.F.R. chapter V) as published by OFAC at its official website, http://www.treas.gov/offices/enforcement/ ofac/sdn/, or at any replacement website or other replacement official publication of such list (the "SDN List"); or

(b) who is an Affiliate of or affiliated with a Person listed above.

"Project Budgets" has the meaning given to such term in Section 5.1(m)(iv).

"Project Documents" has the meaning given to such term in Section 7.9(a).

"Project Forecasts" means, collectively, the then-current Project P Forecast and Project S Forecast.

"Project Leases" has the meaning given to such term in Section 7.9(a).

"Project Maximum Loan Amount" means, (i) with respect to Project P, the Project P Maximum Loan Amount and (ii) with respect to Project S, the Project S Maximum Loan Amount.

"Project P" means the "Advanced Powertrain Facility Project" for the construction of the facility to design and manufacture lithium-ion battery packs, electric motors and electric components, as described in more detail in the Application.

"Project P Advance" has the meaning given to such term in Section 2.1(b)(ii),

"Project P Borrower Commitment" has the meaning given to such term in Section 2.8(a).

"Project P Borrower Payments" has the meaning given to such term in Section 2.8(a).

"Project P Budget" has the meaning given to such term in Section 5.1(m)(iv).

"Project P Contingency Percentage" has the meaning given to such term in Section 2.9(b)(i).

"Project P Excess Cost Overrun" has the meaning given to such term in Section 2.9(b)(i).

"Project P Facility Fee" means a facility fee equal to $101,186 to be paid by the Borrower to DOE on the Principal Instrument Delivery Date.

"Project P Final True-Up Advance" has the meaning given to such term in Section 2.7(a)(i)(Y).

"Project P Forecast" means, as of any date of determination, with respect to Project P, an updated forecast of costs showing for such Project the Paid or Committed Costs, the Remaining Uncommitted Costs, the Forecasted Total Costs and the Remaining Project P Contingency Amount, in each case together with a description of the methodology and assumptions used to produce such estimates.

"Project P Loan" has the meaning given to such term in Section 2.1(a)(i).

"Project P Loan Commitment Amount" has the meaning given to "Loan Commitment Amount" in Note P.

"Project P Maximum Loan Amount" has the meaning given to such term in Section 2.7(a)(i).

"Project P Required Contingency Percentage" has the meaning given to such term in Section 2.9(b)(i).

"Project S" means the "Advanced Technology Vehicle and Manufacturing Project" to complete the development of the Tesla Model S sedan (the "Model S") and construct its manufacturing facility, as described in more detail in the Application.

"Project S Advance" has the meaning given to such term in Section 2.1(b)(iii).

"Project S Borrower Commitment" has the meaning given to such term in Section 2.8(b).

"Project S Borrower Payments" has the meaning given to such term in Section 2.8(b).

"Project S Budget" has the meaning given to such term in Section 5.1(m)(iv).

"Project S Contingency Percentage" has the meaning given to such term in Section 2.9(b)(ii).

"Project S Excess Cost Overrun" has the meaning given to such term in Section 2.9(b)(ii).

"Project S Facility Fee" means a facility fee equal to $363,861 to be paid by the Borrower to DOE on the Principal Instrument Delivery Date.

"Project S Final True-Up Advance" has the meaning given to such term in Section 2.7(a)(ii)(Y).

"Project S Forecast" means, as of any date of determination, with respect to Project S, an updated forecast of costs showing for such Project the Paid or Committed Costs, the Remaining Uncommitted Costs, the Forecasted Total Costs and the Remaining Project S Contingency Amount, in each case together with a description of the methodology and assumptions used to produce such estimates.

"Project S Loan" has the meaning given such term in Section 2.1(a)(ii).

"Project S Maximum Loan Amount" has the meaning given to such term in Section 2.7(a)(ii).

"Project S Loan Commitment Amount" has the meaning given to "Loan Commitment Amount" in Note S.

"Project S Required Contingency Percentage" has the meaning given to such term in Section 2.9(b)(ii).

"Project Shortfall" has the meaning given to such term in Section 2.10.

"Projects" means, collectively, Project P and Project S.

"Proposed Ratio Change" has the meaning given to such term on Annex 9.1.

"Prudent Industry Practice" means, at a particular time, (a) any of the practices, methods and acts engaged in or approved by a significant portion of the advanced technology vehicle and component manufacturing sector in the United States, and to the extent a determination as to engagement in or approval by a significant portion cannot reasonably be made in such sector, the practices, methods and acts of both the technology and automotive sectors generally in the United States, in each case at such time, or (b) with respect to any matter to which clause (a) does not apply, any of the practices, methods and acts which, in the exercise of reasonable business judgment at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices (including, without limitation, the protection of Intellectual Property), reliability, safety and expedition. "Prudent Industry Practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of reasonable business practices, methods or acts having due regard for, among other things, the requirements of any Governmental Authority of competent jurisdiction, and, with respect to the Borrower's Prudent Industry Practice, the rights of DOE in respect of the Loan Documents.

"Qualified IPO" means an IPO in which (i) the pre-public offering market capitalization of the Borrower is at least $250,000,000 (as determined by multiplying the number

of all shares of outstanding capital stock of the Borrower immediately prior to the public offering (on an as-converted basis) by the price per share offered to the public as of the closing of the public offering) and (ii) which results in aggregate cash proceeds to the Borrower of not less than $50,000,000 (net of underwriting discounts and commissions).

"Qualified Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) that is intended to be tax-qualified under Section 401(a) of the Code and which is or at any time was maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever made, or been obligated to make, contributions or with respect to which the Borrower or any ERISA Affiliate has incurred or is likely to incur any material liability or obligation.

"Qualifying Affiliate" means any Affiliate of the Borrower none of the Capital Stock of which (other than directors' qualifying shares) is held by another Affiliate of the Borrower (other than a Subsidiary of the Borrower).

"Qualifying Investment" means, at any time of determination, each of the following:

(a) any acquisition of Capital Stock of a Person engaging in a Strategic Business as of such time of determination if as a result of such Investment such Person becomes a Subsidiary;

(b) any acquisition of assets constituting all or any substantial part of the business or assets of any other Person or any division or other business unit of any Person, in each case, constituting or part of a Strategic Business as of such time of determination;

(c) any merger or consolidation with another Person (other than a Person that is a Subsidiary) engaging in a Strategic Business as of such time of determination if such merger or consolidation complies with Section 9.5(p);

(d) any joint venture or strategic alliance entered into in the ordinary course of business consisting of (i) the development of technology or the providing of technical support to third parties and/or (ii) the licensing of Intellectual Property that constitutes technology; *provided* that (x) any such licensing by the Borrower or any Subsidiary is solely to the extent otherwise permitted hereunder; (y) in no event may the investment in such joint venture or strategic alliance or any agreement relating thereto restrict the ability of the Borrower or any Subsidiary to exploit Intellectual Property that is required for the design, construction or operation of Project P or Project S, or for producing products as contemplated by the Business Plan; and (z) any Intellectual Property required for the design, construction and operation of Project S or P, or for producing products as contemplated by the Business Plan is owned or fully available for use by the Borrower without restriction; and

(e) any other acquisition of Capital Stock in a Person engaging in a Strategic Business as of such time of determination, and any loans, advances or other extensions of credit to any Person engaging in a Strategic Business as of such time of determination, in each case in

this clause (d), if the Borrower determines in the exercise of its reasonable business judgment that making such Investment is strategic for the Borrower's own business.

"Quarterly Payment Date" means each March 15, June 15, September 15 and December 15, or if not a Business Day, the next Business Day.

"Quarterly Reporting Date" has the meaning given to such term in Section 8.2(a).

"Recovery Event" means (i) any settlement of or payment in respect of any property or casualty insurance claim, any warranty or any condemnation proceeding relating to any Collateral or any other property or assets of the Borrower or any Subsidiary and (ii) any other extraordinary receipts (e.g., cash received by or paid to the account of the Borrower or any Subsidiary not in the ordinary course of business from, for example, damage claims under construction contracts) with respect to any Collateral or any other property or assets of the Borrower or any Subsidiary.

"Registration Rights Agreement" means the Registration Rights Agreement to be executed and delivered to DOE by the Borrower, substantially in the form of Exhibit M.

"Reimbursement Amount" means all amounts paid by DOE to FFB pursuant to Section 6.3 of the Program Financing Agreement which relate to or arise out of FFB providing or having provided financing under the Notes.

"Reimbursement Obligation" means the obligation of the Borrower or any Guarantor to reimburse DOE pursuant to Article IV.

"Reinvestment Deferred Amount" means with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any Subsidiary in connection therewith that are not applied to prepay the Advances pursuant to Section 3.6(c) as a result of the delivery of a Reinvestment Notice.

"Reinvestment Event" means any Specified Disposition or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

"Reinvestment Notice" means a written notice executed by a Responsible Officer of the Borrower stating that no Default or Event of Default has occurred and is continuing and that the Borrower intends and expects to use all or a specified portion of the Net Cash Proceeds of (i) a Recovery Event for the permitted repair, restoration or replacement of the property or assets subject to such Recovery Event or (ii) a Specified Disposition for the purchase of Reinvestment Property.

"Reinvestment Prepayment Amount" means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date for the permitted repair, restoration or replacement of the property or assets subject to the relevant Recovery Event or, in the case of a Specified Disposition, for the purchase of Reinvestment Property.

"Reinvestment Prepayment Date" means, with respect to any Reinvestment Event, the earlier of (i) the date occurring 180 days after such Reinvestment Event and (ii) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, diligently pursue the permitted repair, restoration or replacement of the property or assets subject to the relevant Recovery Event or, in the case of a Specified Disposition, the purchase of Reinvestment Property.

"Reinvestment Property" means (i) with respect to any Specified Disposition involving any assets that are part of either Project, equipment or other assets that become part of such Project, (ii) with respect to any other Specified Disposition involving assets of any Obligor, any assets used or useful in the business of the Obligors (provided that if the assets sold are Collateral then the Reinvestment Property acquired with the Net Cash Proceeds from such sale shall also become Collateral) and (iii) with respect to any other Specified Disposition involving assets of any Non-Guarantor Subsidiary, any assets used or useful in the business of the Borrower or any Subsidiary.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing, migrating and the like, into, through or upon any land or water or air, or otherwise entering into the environment.

"Remaining Project P Contingency Amount" has the meaning given to such term in Section 2.9(a).

"Remaining Project S Contingency Amount" has the meaning given to such term in Section 2.9(a).

"Remaining Uncommitted Costs" has the meaning given to such term in Section 2.9(a).

"Requested Advance Date" means, for any Advance Request, the date requested by the Borrower for FFB to make an Advance under the relevant Note.

"Required Consents" has the meaning given to such term in Section 6.6.

"Required Insurance" has the meaning given to such term in Section 7.4(c).

"Requirements of Law" means, as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court of competent jurisdiction or other Governmental Authority, in each case applicable to and binding upon such Person and any of its property, and to which such Person and any of its property is subject.

"Responsible Officer" means, with respect to any Person, the chief executive officer, president, chief accounting officer, chief financial officer, treasurer, vice president of finance, controller or general counsel of such Person.

"Restoration Account" has the meaning given to such term in Section 7.5(c).

"Restricted Payment" has the meaning given to such term in Section 9.7.

"Running Balance Calculation" has the meaning given to such term in Section 2.9(c)(ii)(D).

"Safe Harbor Corrective Plan" has the meaning given to such term in Section 2.10.

"SEC" means the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"Section 136" means Section 136 of the Energy Independence and Security Act of 2007 (Pub.L. 110-140), as amended from time to time.

"Secured Obligations" means the Note P Secured Obligations and the Note S Secured Obligations.

"Secured Parties" means, collectively, DOE, FFB, the Collateral Trustee and any other holder of any Secured Obligations outstanding at any time.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agreement" means the Pledge and Security Agreement to be executed and delivered by the Borrower and each Guarantor in favor of the Collateral Trustee for the benefit of the Secured Parties, substantially in the form of Exhibit G.

"Security Documents" means, collectively, the Collateral Trust Agreement, the Security Agreement, the Collateral Schedules, each Collateral Supplement, each Copyright Security Agreement, each Patent Security Agreement, each Trademark Security Agreement, each Control Agreement, the Deer Creek Collateral Access Agreement, each other Collateral Access Agreement, each Mortgage and each other security document hereafter delivered to any Lender Party granting a Lien on any property and assets of any Person to secure any of the Secured Obligations.

"Site-Dependent Advance" means any Advance, to the extent not used to fund the cost of certain engineering, integration, design and development services, equipment and assembly tooling and supplier tooling, as identified in the Business Plan.

"Sites" means, with respect to each of Project P and Project S, the real property on which such Project is or is intended to be situated.

"Solvent" means, with respect to any Person, that as of the date of determination, (a) the sum of such Person's debt and liabilities (including contingent liabilities) does not exceed the present fair saleable value of such Person's present assets; (b) such Person's capital is not unreasonably small in relation to its business as contemplated on each of the Principal Instrument Delivery Date, the Financial Closing Date and the Requested Advance Date and reflected in the Business Plan or with respect to any transaction contemplated or undertaken after the Principal Instrument Delivery Date; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such

debts as they become due (whether at maturity or otherwise). For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Completion Date" means thirty-six (36) months from the Financial Closing Date.

"Specified Disposition" means a Disposition of any property or assets of the Borrower or any Subsidiary (whether or not Collateral) made pursuant to clause (b) or (l) of Section 9.5.

"Standard & Poor's" or "S&P" Standard & Poor's Ratings' Group, a division of McGraw-Hill Inc., a New York corporation.

"Strategic Business" means, at any time of determination, any business that supports, or could reasonably be expected to support, the business of the Borrower and its Subsidiaries contemplated in the Application and the Business Plan and extensions of that business that further or facilitate the development, manufacture, assembly and/or introduction of advanced technology vehicles and qualifying components (each as defined in the Applicable Regulations).

"Subordination Agreement" means the Intercompany Subordination Agreement to be executed and delivered to DOE by the Borrower and its Subsidiaries, substantially in the form of Exhibit E.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with United States generally accepted accounting principles as of such date, as well as any other corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Joinder Agreement" means a Subsidiary Joinder Agreement, substantially in the form of Exhibit H, to be executed and delivered to DOE and the Collateral Trustee by each Additional Guarantor pursuant to Section 7.6(a) or (b).

"Subsidiary Obligations" means, with respect to any Subsidiary, all obligations and liabilities of such Subsidiary which may arise under or in connection with the Guarantee or any other Loan Document, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including all fees and disbursements of counsel to DOE or FFB) that are required to be paid by such Subsidiary pursuant to the terms of the Guarantee or any other Loan Document.

"Total Project Costs" means all hard costs and soft costs incurred in connection with the Projects through Final Completion of each, including all construction and materials costs, engineering and design costs, costs to prepare the Projects for operation, administrative costs, costs of compliance with the Loan Documents and legal costs in connection with the foregoing.

"Total Project P Costs" means the Total Project Costs that either (i) relate solely to Project P or (ii) if related to both Projects, are reasonably allocable to Project P.

"Total Project S Costs" means the Total Project Costs that either (i) relate solely to Project S or (ii) if related to both Projects, are reasonably allocable to Project S.

"Trademarks" means trademarks, trade names, business names, trade styles, service marks, logos and other source or business identifiers, and in each case, all goodwill associated therewith, and all registrations and recordations thereof and all rights to obtain such renewals and extensions.

"Trademark Security Agreement" means the Notice of Grant of Security Interest in Trademarks to be executed and delivered by the Borrower, each applicable Guarantor, the Collateral Trustee and the other parties named therein, substantially in the form of Exhibit E to the Security Agreement.

"Trade Secrets" has the meaning given such term in the definition of Intellectual Property.

"Transaction Documents" means, collectively, the Loan Documents and the Project Documents.

"Transfer Request" has the meaning given to such term in Section 2.12(a).

"Transmission Code" means the code delivered by DOE to each of the Authorized Transmitters of the Borrower.

"True-Up Advance" means an Interim True-Up Advance or a Final True-Up Advance, as applicable.

"UCC" means the Uniform Commercial Code as adopted and in effect in the State of New York.

"Undrawn Deferred Amounts" has the meaning given to such term in Section 2.12(h).

"United States" and "U.S." means the United States of America.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107-56).

"Voting Stock" means with respect to any Person, such Person's Capital Stock having the right to vote for election of directors (or the equivalent thereof) of such Person under ordinary circumstances.

"Warrant Shares" means the shares of Series E Preferred Stock of the Borrower issuable pursuant to the Warrants and the shares of common stock issuable upon conversion of such Series E Preferred Stock.

"Warrants" means the rights to purchase 9,255,035 Warrant Shares to be executed and delivered to DOE by the Borrower, substantially in the form of Exhibit L, as such number may be adjusted in accordance with the terms of the Warrants.

"Wholly-Owned Subsidiary" means, with respect to any Person, any Subsidiary of such Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly-Owned Subsidiaries.

"Withdrawal Request" has the meaning given to such term in Section 2.12(a).

Annex 9.1

FINANCIAL COVENANTS

(a) **Rules of Construction**.

(i) The financial covenants set forth in this Annex 9.1 will be based on the Borrower's consolidated Financial Statements in accordance with the principles set forth in Section 1.5 of the Agreement. They will be calculated, and the terms set forth in paragraph (b) below will be defined, in a manner that is consistent with the examples set forth in the document titled "Financial Covenant Examples" included in the Forms Supplement.

(ii) For the avoidance of doubt, any calculation of financial liabilities pursuant to the financial covenants set forth in this Annex 9.1 shall be made on a nominal or face value basis without regard to any accounting principle permitting a Person to elect to value its financial liabilities at the fair value thereof.

(b) **Defined Terms**.

All other capitalized terms used in this Annex 9.1 will have the meanings ascribed thereto in the Agreement.

"Cash Balance" means, for any period, an amount determined for the Borrower and its Subsidiaries on a consolidated basis equal to the portions of currency, credit balances in deposit accounts (other than Permitted Restricted Deposits) and Cash Equivalents held by them that are not required to be classified as "restricted cash" on a balance sheet in conformity with GAAP, other than solely as a result of restrictions under this Agreement, and that are free and clear of all Liens (other than Liens permitted pursuant to Sections 9.3(a) and (i) of the Agreement).

"Consolidated Adjusted EBITDA" means, for any period, an amount determined for the Borrower and its wholly-owned subsidiaries on a consolidated basis equal to the sum of:

(X) Consolidated Net Income,

plus (Y) the sum, without duplication, of the amounts for such period to the extent included in the calculation of Consolidated Net Income of: (i) Consolidated Interest Expense, *plus* (ii) provisions for foreign, federal, state, and local taxes based on income, *plus* (iii) total depreciation of tangible assets, *plus* (iv) total amortization of intangible assets (including loan amortization fees), *plus* (v) losses from Dispositions of fixed assets and marketable securities, plus (vi) income from minority interest, ***plus*** (vii) losses from discontinued operations, ***plus*** (viii) losses from currency fluctuations, ***plus*** (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents

an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), ***plus*** (x) extraordinary losses,

minus (Z) the sum, without duplication of the amounts for such period to the extent included in the calculation of Consolidated Net Income of: (i) gains from Dispositions of fixed assets and marketable securities, ***plus*** (ii) loss from minority interest, ***plus*** (iii) gains from discontinued operations, ***plus*** (iv) gains from currency fluctuations, ***plus*** (v) interest income, ***plus*** (vi) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), ***plus*** (vii) extraordinary gains and other extraordinary income.

"Consolidated Current Assets" means, for any period, the following assets of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current assets for such period in conformity with GAAP: cash, cash equivalents, accounts receivable, prepaid expenses, inventory and other current assets.

"Consolidated Current Liabilities" means, for any period, the following liabilities of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities for such period in conformity with GAAP: accounts payable, accrued liabilities, deferred revenue, the current portion of long-term Indebtedness and other current liabilities, ***excluding*** membership fees, reservation payments and customer deposits.

"Consolidated Fixed Charges" means, for any period, an amount determined for the Borrower and its Subsidiaries on a consolidated basis equal to Consolidated Interest Expense ***plus*** cash foreign, federal, state, and local taxes based on income, ***plus*** regularly scheduled Note P Installment and Note S Installment payments, ***plus*** Capital Expenditures and ***plus*** permitted acquisitions.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Consolidated Total Debt, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Hedging Transactions.

"Consolidated Net Income" means, for any period:

(A) the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, ***minus***

(B) the sum of:

(1) the income (or loss) of any Person in which any other Person (other than the Borrower or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such Person during such period, ***plus***

(2) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person's assets are acquired by the Borrower or any of its Subsidiaries, ***plus***

(3) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, or Requirements of Law applicable to that Subsidiary, ***plus***

(4) any after tax gains or losses attributable to returned surplus assets of any Pension Plan.

"Consolidated Total Debt" means, as at any date of determination: (A) the aggregate amount of all obligations for borrowed money, whether current or long term, and all obligations evidenced by bonds (except performance bonds), debentures, notes, loan agreements or other debt instruments, (B) the maximum amount available by any undrawn letters of credit, bankers acceptances, guarantees, or similar instruments, (C) any Disqualified Stock, capitalized lease obligations, interest rate swap obligations or asset securitization transactions and (D) all other Indebtedness, in each case, of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"Consolidated Total Liabilities" means, for any period, the total liabilities of the Borrower and its Subsidiaries on a consolidated basis determined in conformity with GAAP but in any event including all warranty reserves.

"Shareholder Equity" means, for any period, the shareholder equity of the Borrower and its Subsidiaries on a consolidated basis determined in conformity with GAAP.

(c) **Phase A.**

During the period from the Principal Instrument Delivery Date through December 15, 2012, the following financial covenants will be measured as follows:

(i) Current Ratio. The Borrower shall not permit the ratio of Consolidated Current Assets to Consolidated Current Liabilities (the "Current Ratio") as of the last day of any fiscal quarter that ends during such period, to be less than 1.4 to 1.0.

(ii) Cash Balance. The Borrower shall not permit the Cash Balance as of the last day of any month that ends during such period to be less than the sum of (A) Consolidated Interest Expense annualized for the next twelve (12) months (based on the amount of Indebtedness of the Borrower and its Subsidiaries outstanding as of such date) and (B) $15 million.

(d) **Phase B**.

For each fiscal quarter ending after December 15, 2012 (each such quarter, an "Applicable Quarter"), the following financial covenants will be measured as follows:

(i) Leverage Ratio. For each Applicable Quarter, the Borrower shall not permit the ratio of Consolidated Total Debt (as of the last day of such Applicable Quarter) to Consolidated Adjusted EBITDA (for the trailing twelve (12) months ending with such Applicable Quarter) to exceed the levels set forth in the schedule below for the Fiscal Year during which such Applicable Quarter occurs:

Fiscal Year Ending	Maximum Ratio of Consolidated Total Debt to Consolidated Adjusted EBITDA
December 31, 2012	6.5 to 1.0
December 31, 2013	4.5 to 1.0
December 31, 2014	3.5 to 1.0
December 31, 2015 and thereafter	2.5 to 1.0

(ii) Interest Coverage Ratio. For each Applicable Quarter, the Borrower shall not permit the ratio of Consolidated Adjusted EBITDA (for the trailing twelve (12) months ending with each Applicable Quarter and tested as of the last day of such Applicable Quarter) to Consolidated Interest Expense (for the trailing twelve (12) months ending with such Applicable Quarter) to be less than the levels set forth in the schedule below for the Fiscal Year during which such Applicable Quarter occurs:

Fiscal Year Ending	Minimum Ratio of Consolidated Adjusted EBITDA to Consolidated Interest Expense
December 31, 2012	1.25 to 1.0
December 31, 2013	1.75 to 1.0
December 31, 2014 and thereafter	2.00 to 1.0

(iii) Fixed Charge Coverage Ratio. For each Applicable Quarter, the Borrower shall not permit the ratio of Consolidated Adjusted EBITDA to Consolidated Fixed Charges ("Fixed Charge Coverage Ratio") (for the trailing twelve (12) months ending with such Applicable Quarter) to be less than the levels set forth in the schedule below for the Fiscal Year during which such Applicable Quarter occurs:

Fiscal Year Ending	Minimum Fixed Charge Coverage Ratio
12/31/2013	1.0 to 1.0
12/31/2014 and thereafter	1.25 to 1.0

provided, that if the Borrower shall submit any updated Business Plan in accordance with Section 8.2(b) of the Agreement, which Business Plan shall include financial projections which account for changes in capital expenditures and financing programs, the Borrower may propose, as part of such updated Business Plan, revised Minimum Fixed Charge Coverage Ratios based on such changes (each, a "Proposed Ratio Change"). Unless DOE explicitly rejects any Proposed Ratio Change within forty-five (45) days of receiving any Business Plan delivered in accordance with Section 8.2(b) of the Agreement, DOE's approval of any Business Plan as a whole shall be deemed to extend to the Proposed Ratio Changes contained therein.

(iv) Current Ratio. For each Applicable Quarter, the Borrower shall not permit the Current Ratio to be less than the levels set forth in the schedule below for the Fiscal Year during which such Applicable Quarter occurs:

Fiscal Year Ending	Minimum Ratio of Current Assets to Current Liabilities
12/31/2012	1.0 to 1.0
12/31/2013	1.05 to 1.0
12/31/2014	1.10 to 1.0
12/31/2015 and thereafter	1.15 to 1.0

(v) Total Liabilities to Shareholder Equity. From and after March 31, 2014, the Borrower shall not permit the ratio of Consolidated Total Liabilities to Shareholder Equity to exceed 2.0 to 1.0.

(vi) Capital Expenditures. The Borrower shall not, and shall not permit its Subsidiaries to, make or incur any Capital Expenditures for any period in excess of 120% of the aggregate amount set forth for Capital Expenditures for such period in the Business Plan.

(vii) Operating Lease Expense. DOE reserves the right to require an additional financial covenant relating to operating lease expense to be established on mutually agreeable terms in connection with the approval of any Business Plan which includes an amount of operating lease expense that DOE deems to be material.

Annex 9.4

ADDITIONAL CONDITIONS TO PERMITTED EQUITY PROCEEDS INVESTMENTS

The following conditions apply to any Permitted Equity Proceeds Investment, in addition to those set forth in Section 9.4(m).

(a) Such Investment does not and will not divert resources of the Borrower or any of its Subsidiaries, or their respective management's time or attention, reasonably required to, as their top priority, achieve Final Completion of the Projects as soon as possible in a manner consistent with the Business Plan and, thereafter, operate the Projects profitably during the term of the Loans.

(b) If such Investment is made or committed to be made prior to Final Completion of both Projects, the Borrower's Cash Equity after giving effect to such Investment and any commitment to make such Investment is no less than one hundred forty percent (140%) of the amount required to be maintained under Section 2.8(c) to satisfy the Cash Equity Condition, taking into account, among other things, the following:

(i) the reasonably expected liquidity impact of owning such Investment (and any outstanding, planned or expected other Permitted Equity Proceeds Investments) throughout Final Completion of both Projects;

(ii) any encumbrance or restrictions under the agreements relating to such Investment on the ability of any Subsidiary to make Restricted Payments or payments in respect of Indebtedness, make loans, advances or other credit extensions or transfer any of its assets to the Borrower or any other Subsidiary; and

(iii) any planned or expected other Permitted Equity Proceeds Investments.

(c) The liquidity of the Borrower and each of its Subsidiaries after giving effect to such Investment and any commitment to make such Investment is reasonably expected to be sufficient to satisfy their respective liquidity needs during the term of the Loans, taking into account, among other things, the following:

(i) the reasonably expected liquidity impact of owning such Investment (and any existing, planned or expected other Permitted Equity Proceeds Investments) throughout such term;

(ii) any encumbrance or restrictions under the agreements relating to such Investment on the ability of any Subsidiary to make Restricted Payments or

payments in respect of Indebtedness, make loans, advances or other credit extensions or transfer any of its assets to the Borrower or any other Subsidiary; and

(iii) any planned or expected other Permitted Equity Proceeds Investments).

(d) Both before and after giving effect to such Investment, the Borrower is in compliance on a Pro Forma Basis with each of the covenants set forth on Annex 9.1 that are applicable at the time such Investment is made for the period referred to in the definition of Pro Forma Basis and is projected to be in compliance with such financial covenants for the four fiscal quarter period ending one year later.

(e) No Indebtedness or Liens of the Borrower or any Subsidiary (including any Subsidiary acquired pursuant to such Investment) is incurred, created, assumed or permitted to exist in connection with or as a result of such Investment (including any Indebtedness in the nature of acquisition financing, assumption of debt whether or not created in contemplation of such Investment, deferred purchase price, earn-outs or obligations of partnerships in which any such Investment is made) except to the extent permitted pursuant to Section 9.2 or 9.3, as applicable.

(f) Neither the Borrower nor any Subsidiary, as a result of or in connection with any such Investment or any commitment to make such Investment, has created, assumed or incurred or will create, assume or incur any direct or contingent liabilities that are not of a type created, assumed or incurred in the ordinary course of business or that could reasonably be expected, as of the date such Investment is made or as of the date of any commitment to make such Investment, to result in the existence or occurrence of a Material Adverse Effect.

(g) All transactions related to such Investment have been or will be consummated in all material respects in accordance with applicable Requirements of Law.

(h) Such Investment has not been preceded by, or effected pursuant to, a hostile offer by the Borrower (or any Subsidiary or Affiliate thereof).

(i) All actions required under Section 7.6 with respect to such Investment shall have been or will, at the time such Investment is made, be taken (without regard to any time period provided in Section 7.6 within which such actions are required to be completed), or such longer period as DOE may agree to in writing.

(j) Such actions required under Section 7.6, including the grant in favor of the Collateral Trustee of a First Priority security interest in all property and assets acquired by the Borrower or any Guarantor pursuant to such Investment, and in all property and assets owned by any Domestic Subsidiary acquired pursuant to such Investment, will not violate, contravene or result in any breach or constitute any default, or result in or require

the creation of any Lien on any of the revenues, properties or assets of the Borrower, any Guarantor or such Domestic Subsidiary under any agreements related to such Investment (including joint venture agreements and shareholder agreements), subject to customary rights of any party to such agreements that would be applicable solely upon a foreclosure of such security interest.

(k) Prior to or concurrently with the making of such Investment, DOE shall have received, by an Acceptable Delivery Method, a certificate duly executed and delivered by a Responsible Officer of the Borrower confirming that such Investment constitutes a Permitted Equity Proceeds Investment and setting forth in reasonable detail the facts demonstrating the same.

FORM OF NOTE P

See Tab 6A

Exhibit B to the
Arrangement Agreement

FORM OF NOTE S

See Tab 6B

FORM OF DRAWSTOP NOTICE

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Financial Officer

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel

[Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585][1]

[Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220][2]

Re: Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010, between Tesla Motors, Inc. (the "Borrower") and the United States Department of Energy ("DOE") (as amended, supplemented and restated from time to time, the "Arrangement Agreement").

Requested Advance Date: [_____], 20[__].

---

1 Insert DOE addresses if FFB is delivering Drawstop Notice.

2 Insert FFB address if DOE is delivering Drawstop Notice.

This Drawstop Notice (this "Drawstop Notice") is being issued pursuant to Section 2.4(b) of the Arrangement Agreement with respect to the Advance or Advances requested by the Borrower pursuant to the Advance Request dated [_____], 20[__], in respect of which DOE issued an Advance Request Approval Notice dated [_____], 20[__]. Terms defined in the Arrangement Agreement and used herein shall have the meanings given to them therein, unless otherwise defined herein.

We hereby notify you that [DOE][FFB] has determined that as of the date hereof one or more of the [conditions in Section 5.3 and/or Section 5.4 of the Arrangement Agreement with respect to such Advance or Advances has not been met or waived, or, having been met, are not longer met][the conditions precedent to such Advance or Advances contained in [Note P][Note S] and the Note Purchase Agreement has not been met or waived, or, if having been met, are no longer met], including, but not limited to the following:

[List unsatisfied conditions precedent].

[UNITED STATES DEPARTMENT OF ENERGY]

[FEDERAL FINANCING BANK]

By: _____
Name:
Title:
Date:

Exhibit D to the
Arrangement Agreement

FORM OF GUARANTEE

See Tab 15

Exhibit E to the
Arrangement Agreement

FORM OF SUBORDINATION AGREEMENT

See Tab 16

Exhibit F to the
Arrangement Agreement

FORM OF COLLATERAL TRUST AGREEMENT

See Tab 19

Exhibit G to the
Arrangement Agreement

FORM OF SECURITY AGREEMENT

See Tab 20

FORM OF SUBSIDIARY JOINDER AGREEMENT

This **SUBSIDIARY JOINDER AGREEMENT** (this "Agreement"), dated [_____], 20[__], is delivered by [NAME OF ADDITIONAL GUARANTOR], a [_____] organized under the laws of [_____] (the "Additional Guarantor") pursuant to that certain Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Arrangement Agreement"), between TESLA MOTORS, INC., a corporation organized under the laws of the State of Delaware, and the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Arrangement Agreement.

1. Pursuant to Section 7.6 of the Arrangement Agreement, the Additional Guarantor hereby:

(a) agrees that (i) this Subsidiary Joinder Agreement may be attached to the Guarantee, the Security Agreement, the Collateral Trust Agreement and the Subordination Agreement (collectively, the "Joined Agreements"),[1] (ii) by the execution and delivery hereof, the Additional Guarantor becomes a "Guarantor" under the Guarantee, a "Grantor" under the Security Agreement, a "Grantor" under the Collateral Trust Agreement and an "Obligor" under the Subordination Agreement, and (iii) the Additional Guarantor will comply with all the terms and conditions of each Joined Agreement as if it were an original signatory thereto;

(b) represents and warrants that each of the representations and warranties set forth in the Arrangement Agreement and each Joined Agreement and applicable to the Additional Guarantor is true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) both before and after giving effect to this Subsidiary Joinder Agreement as if made on and as of the date hereof (or, to the extent such representations and warranties specifically relate to an earlier date, on and as of such earlier date;

(c) unconditionally, absolutely and irrevocably, guarantees, as primary obligor and not merely as surety, to each of the Guaranteed Parties (as defined in the Guarantee), for the ratable benefit of each, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Guaranteed Obligations (as defined in the Guarantee) in accordance with the Guarantee;

(d) (i) grants to the Collateral Trustee, for the ratable benefit of the Secured Parties, a First Priority security interest in and continuing lien on all of the Additional Guarantor's right, title and interest in, to and under all Collateral (as defined

[1] Add any other Loan Documents to which all Guarantors are a party, if any, as contemplated by Section 7.6 of the Arrangement Agreement.

in the Security Agreement) of the Additional Guarantor to secure the Secured Obligations, in each case whether now or hereafter existing or in which the Additional Guarantor now has or hereafter acquires an interest and wherever the same may be located and (ii) delivers to the Collateral Trustee a Collateral Supplement. All such Collateral shall be deemed to be part of the "Collateral" and hereafter subject to each of the terms and conditions of the Security Agreement; and

(e) represents and warrants that the Collateral Supplement accurately and completely sets forth all additional information required pursuant to the Arrangement Agreement and the Security Agreement with respect to the Additional Guarantor as of the date hereof.

2. The Additional Guarantor agrees from time to time, upon request of DOE or the Collateral Trustee, to take such additional actions and to execute and deliver such additional documents and instruments as DOE or the Collateral Trustee may reasonably request to effect the transactions contemplated by, and to carry out the intent of, this Agreement. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given in pursuant to Section 12.5 of the Arrangement Agreement, and all for purposes thereof, the notice address of the Additional Guarantor shall be the address as set forth on the signature page hereof (or such other address or number as shall be designated by the Additional Guarantor to the Collateral Trustee and DOE in accordance with such notice provisions). In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[No further text on this page; signature follows]

IN WITNESS WHEREOF, the Additional Guarantor has caused this Subsidiary Joinder Agreement to be duly executed and delivered by its duly authorized officer as of [_____], 20[__].

[ADDITIONAL GUARANTOR]

By:_____
Name:
Title:

Address for Notices:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

TESLA MOTORS, INC.
TESLA MOTORS NEW YORK LLC

[FORM OF] COLLATERAL SCHEDULES

[_____], 20[__]

To: The United States Department of Energy (the "DOE") and Midland Loan Services, Inc. (the "Collateral Trustee") with respect to (i) that certain Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Arrangement Agreement"), by and between Tesla Motors, Inc., a Delaware corporation (the "Borrower"), and the DOE, and (ii) that certain Pledge and Security Agreement, dated as of January 20, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Security Agreement"), by and among the Borrower, the other grantors from time to time party thereto, and Collateral Trustee.

The Collateral Schedules are being delivered to you pursuant to the Arrangement Agreement and the Security Agreement. The undersigned hereby certify that the items set forth in the attached Schedules represent the disclosures required with respect to the Collateral and organizational structure of the undersigned in connection with certain definitions and representations, warranties and covenants of the Borrower and other Obligors under the Arrangement Agreement and the Security Agreement. Capitalized terms used herein (or in the attached schedules) and defined in the Arrangement Agreement or the Security Agreement shall have the meanings ascribed in the Arrangement Agreement or the Security Agreement, as applicable, unless the context otherwise requires. The Collateral Schedules may be amended, restated, modified or supplemented, from time to time by means of Collateral Supplements to the extent contemplated by the Arrangement Agreement or the Security Agreement. The Collateral Schedules may not be otherwise amended, restated, modified or supplemented, except in accordance with the terms of Section 12.1 of the Arrangement Agreement and Section 6.1 of the Security Agreement.

The following Schedules are included herein:

Schedule A – Organizational Information Schedule
Schedule B – Pledged Equity Interests
Schedule C – Deposit Accounts, Commodity Accounts and Securities Accounts
Schedule D – Intellectual Property
Schedule E – Investment Property
Schedule F – Letter of Credit Rights
Schedule G – Locations of Collateral
Schedule H – Key Life Insurance Policies
Schedule I – Chattel Paper and Instruments
Schedule J – Commercial Tort Claims
Schedule K – Material Excluded Property

***CONFIDENTIAL** - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have executed the Collateral Schedules as of the date hereof.

TESLA MOTORS, INC.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC

By: Tesla Motors, Inc., its sole member

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

SCHEDULE A

Organizational Information Schedule

OBLIGORS:

(A)	(B)	(C)	(D)	(E)
Full Legal Name	**Jurisdiction and Type of Organization**	**Organizational Identification Number**	**Federal Employer ID Number**	**Jurisdiction of Chief Executive Office**

[List any filings, recordings or registrations required to be made under the Loan Documents that have been filed of record in any governmental, municipal or other appropriate offices pursuant to Section 8.1(d)(v)(B) of the Arrangement Agreement.]

NON-GUARANTOR SUBSIDIARIES:

Full Legal Name	Jurisdiction and Type of Organization	Owned by an Obligor (Y/N)	Controlled Foreign Corporation (Y/N)

SCHEDULE B

Pledged Equity Interests

Company (Owner)	Stock Issuer	Jurisdiction of Issuer	Class of Stock	Certificated (Y/N)	Certificate No.	Par Value	No. of Shares / Units	% of Equity Interests Outstanding

SCHEDULE C

Deposit Accounts, Commodity Accounts and Securities Accounts

Deposit Accounts:

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)

Securities Accounts:

Company	Name and Address of Financial Institution	Account Number	Account Name	Purpose	Excluded Account			
					Permitted Restricted Deposit (Y/N)	Securities Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)

Commodity Accounts:

Company	Name and Address of Commodity Intermediary	Account Number	Account Name	Purpose

SCHEDULE D

Intellectual Property

[OBLIGOR]

Trademarks and Trademark Applications

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status

Trade Names

Domain Names

Name	Tld	Registrar	Expiration Date

Patents and Patent Applications

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information

Copyrights and Copyright Applications

Company	App. No. / Reg. No.	App. Filing Date/ Reg. Date	Description

Licensing Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date

Trade Secrets and Know-How

SCHEDULE E

Investment Property

Pledged Equity Interests:

Pledged Debt:

Securities Accounts:

Commodity Accounts:

Other Investment Property:

SCHEDULE F

Letter of Credit Rights

SCHEDULE G

Locations of Collateral

[Obligor] maintains Equipment, Inventory and other assets at the following locations in the United States of America:

Name	Location	Location Type[1]	Value of assets exceeds $1,000,000? (Y/N)

[Obligor] maintains Equipment, Inventory and other assets at the following locations outside of the United States of America:

Name	Location	Location Type[2]	Value of assets exceeds $5,000,000? (Y/N)

[1] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

[2] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

SCHEDULE H

Key Life Insurance Policies

SCHEDULE I

Chattel Paper and Instruments

SCHEDULE J

Commercial Tort Claims

SCHEDULE K

Material Excluded Property

(a)

(b)

(c)

(d)

(e)

CONFIDENTIAL – This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

TESLA MOTORS, INC.
TESLA MOTORS NEW YORK LLC
[ALL OTHER OBLIGORS]

[FORM OF] COLLATERAL SUPPLEMENT NO. [ ][1][2]

[_____], 20[__]

To: The United States Department of Energy ("DOE") and Midland Loan Services, Inc.(the "Collateral Trustee") with respect to (i) that certain Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Arrangement Agreement"), by and between Tesla Motors, Inc., a Delaware corporation (the "Borrower"), and DOE and (ii) that certain Pledge and Security Agreement, dated as of January 20, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Security Agreement"), by and among the Borrower, the other grantors from time to time party thereto, and Collateral Trustee.

[This Collateral Supplement is being delivered to you pursuant to Section 5.3(p) of the Arrangement Agreement in connection with the Borrower's Advance Request dated [_____], 20[__]. The undersigned hereby certify that the attached supplemental Schedules reflect all assets of the type referenced in the Collateral Schedules that have been acquired or developed by the Obligors (whether using the proceeds from any Advance or otherwise) since the date of the [last Advance Request[3]][Principal Instrument Delivery Date[4]].]

---

[1] To the extent applicable, all information in the attached schedules shall be set forth in a format substantially similar to the applicable Collateral Schedules previously delivered. However, the attached schedules should list only the information referenced in the applicable paragraph selected below from among the alternative bracketed paragraphs, not a restatement of the existing schedules (unless DOE or the Collateral Trustee otherwise consents or requests).

[2] The collateral supplements delivered should be numbered sequentially to help ensure the order of documents delivered and the completeness of the parties' files.

[3] Use for all Collateral Supplements other than Collateral Supplement No. 1.

[4] Use for Collateral Supplement No. 1.

CONFIDENTIAL: Contains proprietary commercial/financial information and/or trade secrets. Do not release under FOIA

This Collateral Supplement is being delivered to you pursuant to Section 7.3(a) of the Arrangement Agreement with respect to Intellectual Property matters that have not been previously disclosed in the Collateral Schedules or a Collateral Supplement. The undersigned hereby certify that the attached supplemental schedules reflect (i) all applications to register or issue any Intellectual Property filed with the United States Patent and Trademark Office, the United States Copyright Office, any state registry or foreign counterpart of the foregoing (whether such application is filed by the Borrower, any of its Subsidiaries, or through any agent, employee, licensee, or designee thereof), (ii) all Intellectual Property registered by any such office, (iii) all registered domain names, the loss of which could reasonably be expected to result in a Material Adverse Effect, and (iv) all new material licenses or other agreements related to Intellectual Property entered into by the Borrower or any of its Subsidiaries, in each case to the extent not otherwise previously disclosed.][5]

[This Collateral Supplement is being delivered to you pursuant to Section 7.6(a) of the Arrangement Agreement in connection with [_____] becoming an Additional Guarantor. The undersigned hereby certify that the attached supplemental schedules reflect (i) all issued and outstanding Capital Stock of such Additional Guarantor and (ii) all assets of the type referenced in the Collateral Schedules that are owned by such Additional Guarantor as of the date hereof.]

[This Collateral Supplement is being delivered to you pursuant to Section 7.6(b) of the Arrangement Agreement in connection with [_____], which is a First-Tier Foreign Subsidiary of the Borrower that is not required to become a Guarantor. The undersigned hereby certify that the attached supplemental schedules reflect that portion of the Capital Stock of such Foreign Subsidiary that is required to be included in the Collateral pursuant to Section 7.6(e)(ii).]

[This Collateral Supplement is being delivered to you pursuant to Section 7.6(c) of the Arrangement Agreement in connection with [_____]'s acquisition of an interest in After Acquired Material Real Property. The undersigned hereby certify that the attached supplemental schedules reflect (i) a description of the interest acquired, (ii) the location of the real property, (iii) any structures or improvements thereon, (iv) the nature of the business to be conducted thereat and (v) the approximate fair market value of the Collateral to be located thereon.]

[The undersigned hereby certify that the attached supplemental schedules also include information required under Section 7.6(d) of the Arrangement Agreement with respect to leased or third-party locations meeting the thresholds described in such section and under Section 7.6(e) of the Arrangement Agreement with respect to material Excluded Property (except for any Excluded Property described in clause (a) of the definition thereof, the

---

[5] To be delivered within 30 days of the end of each fiscal quarter.

loss of which could not reasonably be expected to have a Material Adverse Effect) which, in each case, are included herein to the extent not otherwise previously disclosed.][6]

[This Collateral Supplement is being delivered to you pursuant to Section 7.6(f) of the Arrangement Agreement. The undersigned hereby certify that the attached supplemental schedules reflect a description of all Applicable Governmental Claims that have not been previously disclosed in the Collateral Schedules or a Collateral Supplement.]

[This Collateral Supplement is being delivered to you pursuant to Section 7.6(g) of the Arrangement Agreement and Section 3.1(b) of the Security Agreement in connection with a change [(i) in an Obligor's name, type of organization or jurisdiction of organization, (ii) in an Obligor's identity or corporate structure, or (iii) in an Obligor's Federal Taxpayer Identification Number.] The undersigned hereby certify that the attached supplemental schedules reflect such change(s) and include an updated Organizational Information Schedule.]

[This Collateral Supplement is being delivered to you pursuant to Section 8.1(d)(v)(A)(y) of the Arrangement Agreement in connection with Borrower's Compliance Certificate dated [_____], 20[__.] The undersigned hereby certify that the attached supplemental Schedules reflect all material changes in the Collateral Schedules since the date of the last Compliance Certificate.]

[This Collateral Supplement is being delivered to you pursuant to Section [__] of the Security Agreement. The undersigned hereby certify that the attached supplemental schedules identify and describe the applicable Collateral referred to in such Section.][7]

[This Collateral Supplement is being delivered to you pursuant to Section [7.3(b)] [8.4(c)] of the Arrangement Agreement at the request of DOE. The undersigned hereby certify that the attached supplemental schedules reflect such information as has been requested by DOE.]

Capitalized terms used herein (or in the attached exhibits) and defined in the Arrangement Agreement or the Security Agreement shall have the meanings ascribed in the Arrangement Agreement or Security Agreement, as applicable.

This Collateral Supplement may not be amended, modified or supplemented except as required or permitted under the terms of the Arrangement Agreement and/or the Security Agreement.

---

[6] Include this additional bracketed sentence in each Collateral Supplement for which it is relevant.

[7] This alternative language is intended to be used with any of the following Sections of the Security Agreement: 3.2(b), 3.3(b), 3.3(c); 3.4(b); 3.5(b); 3.6(b); 3.8(b); 3.8(e); 3.8(f); 3.8(g).

The following supplemental schedules are included herein:[8]

[Schedule A – Organizational Information Schedule
Schedule B – Pledged Equity Interests
Schedule C – Deposit Accounts, Commodity Accounts and Securities Accounts
Schedule D – Intellectual Property
Schedule E – Investment Property
Schedule F – Letter of Credit Rights
Schedule G – Locations of Collateral
Schedule H – Key Life Insurance Policies
Schedule I – Chattel Paper and Instruments
Schedule J – Commercial Tort Claims
Schedule K – Material Excluded Property
Schedule L – After Acquired Material Real Property
Schedule M – Certificate-of-Title Equipment
Schedule N – Applicable Government Claims]

[Signatures follow]

[8] CONFIDENTIAL: Contains proprietary commercial/financial information and/or trade secrets. Do not release under FOIA. Include applicable schedules.

IN WITNESS WHEREOF, the undersigned have executed this Collateral Supplement as of the date hereof.

TESLA MOTORS, INC.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer]

[ALL OTHER OBLIGORS]

By:_____
Name:
Title:

SCHEDULE A

Organizational Information Schedule

OBLIGORS:

(A)	(B)	(C)	(D)	(E)
Full Legal Name	**Jurisdiction and Type of Organization**	**Organizational Identification Number**	**Federal Employer ID Number**	**Jurisdiction of Chief Executive Office**

[List any filings, recordings or registrations required to be made under the Loan Documents that have been filed of record in any governmental, municipal or other appropriate offices pursuant to Section 8.1(d)(v)(B) of the Arrangement Agreement.]

NON-GUARANTOR SUBSIDIARIES:

Full Legal Name	Jurisdiction and Type of Organization	Owned by an Obligor (Y/N)	Controlled Foreign Corporation (Y/N)

SCHEDULE B

Pledged Equity Interests

Company (Owner)	Stock Issuer	Jurisdiction of Issuer	Class of Stock	Certificated (Y/N)	Certificate No.	Par Value	No. of Shares / Units	% of Equity Interests Outstanding

SCHEDULE C

Deposit Accounts, Commodity Accounts and Securities Accounts

Deposit Accounts:

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)

Securities Accounts

Company	Name and Address of Financial Institution	Account Number	Account Name	Purpose	Excluded Account			
					Permitted Restricted Deposit (Y/N)	Securities Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)

Commodity Accounts

Company	Name and Address of Commodity Intermediary	Account Number	Account Name	Purpose

SCHEDULE D

Intellectual Property

[OBLIGOR]

Trademarks and Trademark Applications

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status

Trade Names

Domain Names

Name	Tld	Registrar	Expiration Date

Patents and Patent Applications

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information

Copyrights and Copyright Applications

Company	App. No. / Reg. No.	App. Filing Date/ Reg. Date	Description

Licensing Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date

Trade Secrets and Know-How

SCHEDULE E

Investment Property

Pledged Equity Interests:

Pledged Debt:

Securities Accounts:

Commodity Accounts:

Other Investment Property:

SCHEDULE F

Letter of Credit Rights

SCHEDULE G

Locations of Collateral

[Obligor] maintains Equipment, Inventory and other assets at the following locations in the United States of America:

Name	Location	Location Type[9]	Value of assets exceeds $1,000,000? (Y/N)

[Obligor] maintains Equipment, Inventory and other assets at the following locations outside of the United States of America:

Name	Location	Location Type[10]	Value of assets exceeds $5,000,000? (Y/N)

[9] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

[10] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

SCHEDULE H

Key Life Insurance Policies

SCHEDULE I

Chattel Paper and Instruments

SCHEDULE J

Commercial Tort Claims

SCHEDULE K

Material Excluded Property

(a)

(b)

(c)

(d)

(e)

SCHEDULE L

After Acquired Material Real Property

Description of Interest Acquired:	Location of Real Property:	Structures or Improvements on Real Property:	Nature of Business to be Conducted at Real Property:	Approximate Fair Market Value of Collateral to be Located at Real Property:

SCHEDULE M

Certificate-of-Title Equipment

SCHEDULE N

Applicable Government Claims

Exhibit J to the
Arrangement Agreement

[FORM OF] COLLATERAL ACCESS AGREEMENT
(Landlord)

THIS COLLATERAL ACCESS AGREEMENT (this "Agreement"), dated as of [_____], 20[__] by and among [_____] (the "Landlord"), MIDLAND LOAN SERVICES, INC., a Delaware corporation (the "Collateral Trustee"), in its capacity as collateral trustee for the benefit of the United States Department of Energy, an agency of the United States of America ("DOE") and other Secured Parties (including, without limitation, the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury) named in the Loan Documents (hereinafter defined), and TESLA MOTORS, INC., a Delaware corporation (the "Company").

RECITALS

A. WHEREAS, the undersigned is the landlord under that certain Lease Agreement, dated as of [_____], 20[__] (the "Lease"), between the Landlord and the Company, as tenant. The Lease covers certain premises more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"). The Landlord is the owner of the indefeasible, fee simple title to the Premises.

B. WHEREAS, the Company, is party to a Loan Arrangement and Reimbursement Agreement, dated January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement" and, together with any other document entered into in connection therewith or the transactions contemplated thereby, as any of the same may be amended, supplemented or otherwise modified from time to time, collectively, the "Loan Documents") with DOE pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program authorized by Section 136 of the Energy Independence and Security Act of 2007, as amended from time to time; and

C. WHEREAS, as a condition to DOE's arranging the financing for the Company pursuant to the Arrangement Agreement, each of the Company and certain of its subsidiaries has granted to the Collateral Trustee a security interest in all of its right, title and interest in, to and under all of its assets, including, without limitation, its inventory, work in process, accounts receivable, accounts, contract rights, general intangibles, goods, merchandise, equipment, chattel paper, instruments, contract rights, permits, software, books and records, investment property, intellectual property, documents, equipment, machinery, fixtures, furnishings, tools, furniture and trade fixtures now owned or hereafter acquired, and all additions, modifications, alterations, improvements, upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing, and all proceeds and products of the same (all such assets and personal property, the "Encumbered Property").

NOW, THEREFORE, in consideration of the premises and covenants herein contained and as an inducement to DOE to enter into the Arrangement Agreement and the other Loan

Documents and to arrange the loans and provide other financial accommodations to the Company thereunder, the parties hereto agree as follows:

1. Landlord represents to Collateral Trustee, with the understanding that DOE is relying on such representations in arranging the loans under the Arrangement Agreement, that:

a. The Lease is in full force and effect, creates a valid and subsisting leasehold interest and estate in and to the Premises, is enforceable in accordance with its terms and has not been modified or amended.

b. The Lease embodies the entire agreement between the Landlord and the Company with respect to the construction, occupancy and use of the Premises. There are no other agreements or understandings between the Landlord and the Company with regard to the construction, occupancy or use of the Premises, and no other agreements or understandings whatsoever between the Landlord and the Company pertaining in any way to the Premises except for the Lease.

c. Rent is payable under the Lease at a rate calculated as provided in the Lease. The Company has no monetary obligation to the Landlord in respect of the use or occupancy of the Premises except for the rent and other charges specifically set forth in the Lease. All rent and other charges due and payable under the Lease through all periods through and including the date hereof have been paid in full.

d. The term of the Lease commenced upon [_____], 20[__] and is scheduled to expire on [_____], 20[__] (other than to the extent termination rights may be available under the Lease).

e. To the knowledge of the undersigned, there are no uncured defaults, breaches or events of default by the Company in the observance or performance of any of its obligations, or facts or circumstances which would, with the passage of time or the delivery of notice, or both, constitute a default, breach or event of default thereunder.

2. The Landlord acknowledges that the Company has entered into the Arrangement Agreement and the other Loan Documents and agrees that the transactions contemplated thereby will not result in a default under the Lease.

3. The Landlord acknowledges that DOE has entered into various financing arrangements with the Company pursuant to the Arrangement Agreement and the other Loan Documents and, as a condition thereto, the Company has granted to the Collateral Trustee for the benefit of the Secured Parties a security interest in all of the Company's right, title and interest in, to and under the Encumbered Property, which may include fixtures that become a part of the Premises demised under the Lease. The Landlord acknowledges the validity of the liens in favor of the Collateral Trustee for the benefit of the Secured Parties on the Encumbered Property and, until such time as the obligations of the Company to DOE under the Loan Documents are paid in full in cash, the Landlord agrees to subordinate any interest it may now or hereafter have in the Encumbered Property including, without limitation, any and all existing liens, whether

contractual or statutory, in favor of the Landlord, and agrees not to distrain or levy upon any Encumbered Property or to assert any landlord lien, right of distraint or other claim against the Encumbered Property for any reason.

4. The Landlord hereby agrees to deliver written and electronic notice to the Collateral Trustee, with a copy to DOE, of any default or event of default by the Company under the Lease, which notice shall specifically describe each alleged default or event of default of the Company, including, without limitation, if any such default or event of default by the Company is a failure to pay any of the Company's monetary obligations under the Lease and, if so, the exact amount owed by the Company to the Landlord. Unless required by applicable law, all notices, requests, demands or other communications given to the Collateral Trustee or DOE (or its designees) shall be given in writing (including by facsimile or electronic transmission) and shall be deemed to have been duly given when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) Business Days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) Business Day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the facsimile number or address set forth below, or, at such other facsimile number or address as shall be designated by such party in a written notice to each other party hereto.

If to Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Facsimile: (913) 253-9709

If to DOE:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Telephone: (202) 586-8146
Facsimile: (202) 586-7809
Email: teslaatvmtransaction@hq.doe.gov

with a copy to (which copy shall not constitute notice):

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-5281
Facsimile: (202) 586-1499
Email: teslaatvmtransaction@hq.doe.gov

5. Upon a termination of the Lease, Landlord will permit the Collateral Trustee and its representatives and invitees to occupy and remain on the Premises; provided that such period of occupation (the "Disposition Period") shall not exceed one hundred days (120) days following receipt by the Collateral Trustee of a written notice of such termination or, if the Lease has expired by its own terms (absent a default thereunder), sixty (60) days following the Collateral Trustee's receipt of written notice of such expiration. If any injunction or stay is issued that prohibits the Collateral Trustee from removing the Encumbered Property, the commencement of the Disposition Period will be deferred or the expiration of the Disposition Period shall be tolled, as the case may be, until such injunction or stay is lifted or removed.

6. At any time during the term of the Lease or the Disposition Period, the Collateral Trustee and its representatives and invitees may inspect, repossess, remove and otherwise deal with the Encumbered Property, and the Collateral Trustee may advertise and conduct public auctions or private sales of the Encumbered Property at the Premises, in each case without interference by Landlord or liability of the Collateral Trustee to Landlord. During the Disposition Period, the Collateral Trustee shall make the Premises available for inspection by Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to re-lease the Premises. If the Collateral Trustee conducts a public auction or private sale of the Encumbered Property at the Premises, the Collateral Trustee shall use reasonable efforts to notify Landlord first and to hold such auction or sale in a manner which would not unduly disrupt Landlord's or any other tenant's use of the Premises.

7. The Landlord represents and warrants to the Collateral Trustee that the Encumbered Property is not subject to any lien or claim in favor of any mortgagee of the Premises and the Landlord agrees that any future mortgage or lien in favor of any mortgagee of the Premises will not create a security interest or lien against the Encumbered Property.

8. In no event shall the Collateral Trustee be: (a) liable or responsible for any act or omission of the Company that occurred prior to the Collateral Trustee's taking possession of the Premises; (b) subject to any claims or defenses which the Landlord might have against the Company; (c) liable or responsible for any rent due under the Lease (or any use or occupancy

charge in lieu thereof) or any default by the Company under the Lease, or obligated to cure any prior default by the Company under the Lease; (d) liable or responsible for any agreement of the Company to indemnify or defend the Landlord, or to reimburse the Landlord for any sums expended by the Landlord; (e) bound by any amendment to the Lease not approved by the Collateral Trustee in writing; or (f) required to occupy or operate in, or to cause tenants to occupy or operate in, the Premises.

9. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICTS OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

10. THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

11. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Any right of Collateral Trustee provided for in this Agreement may be exercised by DOE or any department or instrumentality of the United States of America, or by any successor collateral trustee or agent, on behalf of the Secured Parties.

12. Any party hereto shall have the right to record this Agreement and no such recording shall be an event of default under the Lease.

IN WITNESS WHEREOF, this Collateral Access Agreement has been executed and delivered as of the date first above written.

LANDLORD:

[_____]

By:_____
Name:
Title:

COLLATERAL TRUSTEE:

MIDLAND LOAN SERVICES, INC.

By: _____
Name:
Title:

COMPANY:

TESLA MOTORS, INC.

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of _____
County of _____

On _____ before me, _____
personally appeared _____,who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of _____
County of _____

On _____ before me, _____
personally appeared _____,who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of _____
County of _____

On _____ before me, _____
personally appeared _____,who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

Legal Description of the Land

[FORM OF] COLLATERAL ACCESS AGREEMENT
(Warehouse)

THIS COLLATERAL ACCESS AGREEMENT (this "Agreement"), dated as of [_____], 20[__], by and among [_____] (the "Service Provider"), MIDLAND LOAN SERVICES, INC., a Delaware corporation (the "Collateral Trustee"), in its capacity as collateral trustee for the benefit of the United States Department of Energy, an agency of the United States of America ("DOE") and other Secured Parties (including, without limitation, the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury) named in the Loan Documents (hereinafter defined), and [TESLA MOTORS, INC., a Delaware corporation] (the "Company").

RECITALS

A. WHEREAS, the undersigned is the service provider under that certain [Warehouse and Storage Agreement], dated as of [_____], 20[__] (the "Warehouse Agreement"), between the Service Provider and the Company, as customer. The Warehouse Agreement provides for access to and use by the Company of the premises described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises").

B. WHEREAS, the Company, is party to a Loan Arrangement and Reimbursement Agreement, dated January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement", and together with any other document entered into in connection therewith or the transactions contemplated thereby, as any of the same may be amended, supplemented or otherwise modified from time to time, collectively, the "Loan Documents") with DOE pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program authorized by Section 136 of the Energy Independence and Security Act of 2007, as amended from time to time; and

C. WHEREAS, as a condition to the DOE's arranging the financing for the Company pursuant to the Arrangement Agreement, each of the Company and certain of its subsidiaries has granted to the Collateral Trustee a security interest in all of its right, title and interest in, to and under all of its assets, including, without limitation, its inventory, work in process, accounts receivable, accounts, contract rights, general intangibles, goods, merchandise, equipment, chattel paper, instruments, contract rights, permits, software, books and records, investment property, intellectual property, documents, equipment, machinery, fixtures, furnishings, tools, furniture and trade fixtures now owned or hereafter acquired, and all additions, modifications, alterations, improvements, upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing, and all proceeds and products of the same (all such assets and personal property, the "Encumbered Property").

NOW, THEREFORE, in consideration of the premises and covenants herein contained and as an inducement to the DOE to enter into the Arrangement Agreement and the

other Loan Documents and to arrange the loans and provide other financial accommodations to the Company thereunder, the parties hereto agree as follows:

1. The Service Provider represents to the Collateral Trustee, with the understanding that DOE is relying on such representations in arranging the loans under the Arrangement Agreement, that:

(a) The Warehouse Agreement is in full force and effect, is enforceable in accordance with its terms and has not been modified or amended.

(b) The Warehouse Agreement embodies the entire agreement between the Service Provider and the Company with respect to the access and use of the Premises. There are no other agreements or understandings between the Services Provider and the Company with regard to the Premises or the Company's access thereto or use thereof, except for the Warehouse Agreement.

(c) [Service fees][1] are payable under the Warehouse Agreement at a rate calculated as provided in the Warehouse Agreement. The Company has no monetary obligation to the Service Provider in respect of the Premises or the Company's access thereto or use thereof, except for the [service fees] and other charges specifically set forth in the Warehouse Agreement. All service fees and other charges due and payable under the Warehouse Agreement through all periods through and including the date hereof have been paid in full.

(d) The term of the Warehouse Agreement commenced upon [_____] and is scheduled to expire on [_____] (other than to the extent termination rights may be available thereunder).

(e) To the knowledge of the undersigned, there are no uncured defaults, breaches or events of default by the Company in the observance or performance of any of its obligations, or facts or circumstances which would, with the passage of time or the delivery of notice, or both, constitute a default, breach or event of default, under the Warehouse Agreement.

2. The Service Provider acknowledges that the DOE has entered into various financing arrangements with the Company pursuant to the Arrangement Agreement and the other Loan Documents and, as a condition thereto, the Company has granted to the Collateral Trustee, for the benefit of the Secured Parties, a security interest in all of the Company's right, title and interest in, to and under the Encumbered Property. The Service Provider acknowledges the validity of the liens in favor of the Collateral Trustee for the benefit of the Secured Parties on the Encumbered Property and, until such time as the obligations of the Company to DOE under the Loan Documents are indefeasibly paid in full, the Service Provider agrees to subordinate any interest it may now or hereafter have in the Encumbered Property including, without limitation, any and all existing liens, whether contractual or statutory, in favor of the Service Provider, and agrees not to distrain or levy upon or take any other enforcement action against any Encumbered

[1] Conform term as appropriate for the agreement.

Property or to assert any lien, right of distraint or other claim against the Encumbered Property for any reason.

3. Upon reasonable prior written notice to the Service Provider, the Service Provider and the Company irrevocably authorize the Collateral Trustee to enter upon the Premises for the purposes of inspecting or removing the Encumbered Property from the Premises as a remedy under the Arrangement Agreement.

4. In no event shall the Collateral Trustee be: (a) liable or responsible for any act or omission of the Company; (b) subject to any claims or defenses which the Service Provider might have against the Company; (c) liable or responsible for any default by the Company under the Warehouse Agreement or obligated to cure any prior default by the Company under the Warehouse Agreement; or (d) liable or responsible for any agreement of the Company to indemnify or defend the Service Provider, or to reimburse the Service Provider for any sums expended by the Service Provider.

5. Upon a termination of the Warehouse Agreement, the Service Provider will permit the Encumbered Property to remain on the Premises; *provided* that such period of occupation (the "Disposition Period") shall not exceed one hundred twenty (120) days following receipt by the Collateral Trustee of a written notice of such termination or, if the Warehouse Agreement has expired by its own terms (absent a default thereunder), sixty (60) days following the Collateral Trustee's receipt of written notice of such expiration. If any injunction or stay is issued that prohibits the Collateral Trustee from removing the Encumbered Property, the commencement of the Disposition Period will be deferred or the expiration of the Disposition Period shall be tolled, as the case may be, until such injunction or stay is lifted or removed.

6. The Service Provider shall have no liability to the Company or the Collateral Trustee if the Service Provider complies with the Collateral Trustee's written request(s) to permit the Collateral Trustee or its agents or representatives access to the Encumbered Property in accordance with the terms and condition hereof, and the Collateral Trustee hereby agrees that it will only give such request(s) for the purpose of exercising any right it may have under the terms of the Arrangement Agreement. In the event the Collateral Trustee fails to comply with this paragraph 6, the Service Provider shall have no liability to the Company or the Collateral Trustee for following the Collateral Trustee's request.

7. The Service Provider hereby agrees to deliver written and electronic notice to the Collateral Trustee, with a copy to DOE, of any default or event of default by the Company under the Warehouse Agreement, which notice shall specifically describe each alleged default or event of default of the Company, including, without limitation, if any such default or event of default by the Company is a failure to pay any of the Company's monetary obligations under the Warehouse Agreement and, if so, the exact amount owed by the Company to the Service Provider. Unless required by applicable law, all notices, requests, demands or other communications given to the Collateral Trustee or DOE (or its designees) shall be given in writing (including by facsimile or electronic transmission) and shall be deemed to have been duly given when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) Business Days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to

the receiving party, one (1) Business Day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the facsimile number or address set forth below, or, at such other facsimile number or address as shall be designated by such party in a written notice to each other party hereto.

If to Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Facsimile: (913) 253-9709

If to DOE:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-8146
Facsimile: (202) 586-7809
Email: teslaatvmtransaction@hq.doe.gov

with a copy to (which copy shall not constitute notice):

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-5281
Facsimile: (202) 586-1499
Email: teslaatvmtransaction@hq.doe.gov

8. This Agreement shall remain in effect for the term of the Warehouse Agreement, unless otherwise agreed to by the parties hereto in writing.

9. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICTS OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

10. THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

11. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Any right of the Collateral Trustee provided for in this Agreement may be exercised by DOE or any department or instrumentality of the United States of America, or by any successor collateral trustee or agent on behalf of the Secured Parties.

[Signature page follows.]

IN WITNESS WHEREOF, this Collateral Access Agreement has been executed and delivered as of the date first above written.

"Service Provider":

_____
By:
Title:

"Collateral Trustee":

Midland Loan Services, Inc.

By:_____
Title:

"Company":

[_____]

_____
By:
Title:

Exhibit A

Description of the Premises

Exhibit L to the
Arrangement Agreement

FORM OF WARRANTS

See Tab 17

Exhibit M to the
Arrangement Agreement

FORM OF REGISTRATION RIGHTS AGREEMENT

See Tab 18

Exhibit N to the
Arrangement Agreement

FORM OF CHARTER AMENDMENT

See Tab 38A

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U S C § 552(b))

[FORM OF] SOLVENCY CERTIFICATE

Pursuant to Section 5.1(c) of the Loan Arrangement and Reimbursement Agreement, dated January 20, 2010 (as it may be amended, supplemented or otherwise modified, the "Arrangement Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings as therein defined), by and between TESLA MOTORS, INC., a Delaware corporation (the "Borrower") and the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America, the undersigned chief financial officer of the Borrower, on behalf of the Borrower and not individually, hereby certifies as follows:

1. I have reviewed the terms of the Arrangement Agreement and the definitions and provisions contained in the Arrangement Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

2. Based upon my review and examination described in paragraph 1 above, I certify, that on and as of the date hereof and, upon and after giving effect to the transactions contemplated by the Transaction Documents, with respect to each Obligor:

(a) the sum of such Obligor's debt and liabilities (including contingent liabilities) does not exceed the present fair saleable value of such Obligor's present assets;

(b) such Obligor's capital is not unreasonably small in relation to its business as contemplated on the date hereof and reflected in the Business Plan; and

(c) such Obligor has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise).

3. For purposes of paragraph 2, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

IN WITNESS WHEREOF, the Borrower, through the undersigned, has made and delivered the foregoing certifications as of [_____], 20[__].

TESLA MOTORS, INC.

_____
Name:
Title: Chief Financial Officer

[FORM OF] BLOCKED ACCOUNT CONTROL AGREEMENT

This Blocked Account Control Agreement, dated as of [_____], 20[__] (this "Agreement") among TESLA MOTORS, INC., a Delaware corporation (the "Debtor"), PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Financial Institution"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among the Debtor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy ("DOE") and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
THE BLOCKED ACCOUNT

1.1 Establishment of Blocked Account. The Financial Institution hereby confirms and agrees that:

(a) the Financial Institution has established account number [IDENTIFY ACCOUNT NUMBER] in the name "ATVM Tesla [Dedicated] [Initial Debt Service] Account" (such account and any successor account, the "Blocked Account") [containing subaccounts entitled "Equity Proceeds Subaccount", "Project P Interim True-Up Subaccount", "Project S Interim True-Up Subaccount", "Project P Designated Overrun Subaccount", "Project S Designated Overrun Subaccount" and "Investment Earnings Subaccount" and such other subaccounts as may be required][1];

(b) the Financial Institution shall not change the name or account number of the Blocked Account without prompt written notice to the Collateral Trustee;

(c) all funds and securities underlying any financial assets credited to the Blocked Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to the Blocked Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank;

(d) All funds and securities delivered to the Financial Institution by the Debtor will be promptly credited to the Blocked Account; and

(e) the Blocked Account is a "securities account" within the meaning of Section 8-501 of the UCC.

---

[1] Use bracketed language for Dedicated Account only.

1.2 Control of the Blocked Account. Subject to Section 5.3, if the Financial Institution shall receive any entitlement orders originated by the Collateral Trustee directing the disposition of funds or transfer or redemption of any financial asset relating to the Blocked Account, the Financial Institution shall comply with such entitlement orders without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Blocked Account and hereby acknowledges and consents to such lien. If the Debtor is otherwise entitled to issue entitlement orders and such entitlement orders conflict with any entitlement orders issued by the Collateral Trustee, the Financial Institution shall follow the entitlement orders issued by the Collateral Trustee.

1.3 "Financial Assets" Election. The Financial Institution hereby agrees that each item of property (including, without limitation, any financial asset, security, instrument or cash) credited to the Blocked Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

ARTICLE II
SUBORDINATION AND WAIVER

2.1 Subordination of Lien; Waiver of Set-Off. In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Blocked Account or any financial assets credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Trustee. The Financial Assets credited to the Blocked Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Trustee (except that the Financial Institution may set off (i) all unpaid amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Blocked Account and (ii) the face amount of any checks which have been credited to such Blocked Account but are subsequently returned unpaid because of uncollected or insufficient funds).

ARTICLE III
CONFLICTS AND ADVERSE CLAIMS

3.1 Conflict with Other Agreements.

(a) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail.

(b) The Financial Institution hereby confirms and agrees that:

(i) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Blocked Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders originated by such persons; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Trustee purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders as set forth in this Agreement.

(c) The Financial Institution shall not make, be required to make, or be liable in any manner for its failure to make, any determination under any other agreement between the Debtor, the Collateral Trustee and DOE, including any determination as to whether any party thereto has complied with the terms of such agreement or is entitled to payment or to exercise any other right or remedy thereunder.

3.2 Adverse Claims. Except for the claims and interest of the Collateral Trustee and of the Debtor in the Blocked Account, the Financial Institution has not received notice of any liens, claims or encumbrances relating to the Blocked Account or any financial assets credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Blocked Account or any financial assets credited thereto, the Financial Institution will promptly notify the Collateral Trustee and the Debtor thereof.

ARTICLE IV
MAINTENANCE OF BLOCKED ACCOUNT

In addition to, and not in lieu of, the obligation of the Financial Institution to honor entitlement orders as set forth in Section 1.2 hereof, the Financial Institution agrees to maintain the Blocked Account as follows:

4.1 Sole Control. Subject to Sections 4.4, 4.5 and 5.3, the Financial Institution agrees that it will take all instruction with respect to the Blocked Account solely from the Collateral Trustee.

4.2 Statements and Confirmations.

(a) The Financial Institution will promptly send copies of all notifications described in Article III, account statements and other correspondence concerning the Blocked Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Collateral Trustee at the address for each set forth in Section 5.3 of this Agreement, including monthly statements listing all securities transactions, receipts and disbursements during the applicable month, together with a current listing of all financial assets held in the Blocked Account.

(b) The Debtor and the Collateral Trustee acknowledge that Federal Regulations require the Financial Institution, without charge and within one (1) business day of its receipt of a broker/dealer confirmation for each security transaction in the Blocked Account to forward to the Debtor a written notification which discloses, among other things: the Financial Institution's name, the Debtor's name, the capacity or capacities in which the Financial Institution is acting, the date (and time, within a reasonable period, upon written request of Debtor) of execution, the identity, price,

number of shares or units or principal amount of debt securities purchased or sold by Debtor, the name of the broker/dealer, the amount of any remuneration received by such broker/dealer from the Debtor and the amount of any remuneration received by the Financial Institution. The Debtor agrees that the period statements described in clause (a) above shall satisfy the Financial Institution's obligation to provide the written notification under this clause (b); *provided* that, upon request, the Financial Institution will provide to the Debtor (with copies to the Collateral Trustee), within a reasonable time and at the Financial Institution's sole expense, all additional information as may be required by Federal Regulations.

4.3 Tax Reporting. All items of income, gain, expense and loss recognized in the Blocked Account, shall be reported to the Internal Revenue Service (and all state and local taxing authorities, to the extent such state and local reporting is otherwise made by Financial Institution) under the name and taxpayer identification number of the Debtor.

4.4 Withdrawal Requests. If the Debtor requests withdrawal of funds from the Blocked Account, the Financial Institution shall honor such request only if the Financial Institution has received a request substantially in the form attached to this Agreement as Exhibit A which has been signed by a Responsible Officer of the Borrower and has been countersigned by DOE (a "Withdrawal Request"). The parties agree that no securities may be withdrawn from the Blocked Account.

4.5 Transfer Requests. If the Debtor requests transfer of funds from the subaccounts within the Blocked Account into another subaccount within the Blocked Account or into the securities account in the name "ATVM Tesla Initial Debt Service Account" with number [_____], the Financial Institution shall honor such request only if the Financial Institution has received a request substantially in the form attached to this Agreement as Exhibit B which has been signed by a Responsible Officer of the Borrower (a "Transfer Request"). The parties agree that no securities may be transferred from the Blocked Account.

4.6 Permitted Investments. The Debtor shall direct the Financial Institution with respect to the selection of investments to be made for the Blocked Account; *provided, however*, all investments shall be of a type described on Exhibit D hereto. Unless otherwise instructed by the Collateral Trustee, the Financial Institution shall cause all interest and investment earnings on the Blocked Account to be deposited into the Investment Earnings Subaccount.

ARTICLE V
MISCELLANEOUS

5.1 Limitations of Financial Institution's Liability.

(a) The Debtor and the Collateral Trustee hereby agree that the Financial Institution is released from any and all liabilities to the Debtor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or gross willful misconduct.

(b) The Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's gross negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement. The provisions of this Section 5.1(b) shall survive the termination of this Agreement and the resignation or removal of the Financial Institution.

(c) Should any dispute arise with respect to this Agreement or the Blocked Account, whether such dispute arises between the parties hereto and others, or between the parties hereto themselves, it is understood and agreed that the Financial Institution may petition (by means of an interpleader or any other appropriate measure) any court of competent jurisdiction for instructions with respect to such dispute and the other parties hereto will hold the Financial Institution harmless and indemnify it against all consequences and expenses that may be incurred by the Financial Institution in connection therewith, which indemnity shall survive the termination of this Agreement or the resignation or removal of Financial Institution.

(d) In the administration of its powers and duties hereunder, the Financial Institution may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, including in-house counsel, accountants and other skilled persons to be selected and retained by it. The Financial Institution shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, including in-house counsel.

(e) Anything in this Agreement to the contrary notwithstanding, in no event shall the Financial Institution be liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Financial Institution has been advised of the likelihood of such loss or damage and regardless of the form of action.

5.2 Termination.

(a) The Financial Institution may terminate this Agreement on thirty (30) days' prior written notice to Collateral Trustee and the Debtor. The Collateral Trustee may terminate this Agreement by written notice to the Financial Institution and the Debtor. The Debtor may not terminate this Agreement.

(b) The obligations of the Financial Institution to the Collateral Trustee pursuant to this Agreement shall continue in effect until the security interest of the Collateral Trustee in the Blocked Account has been terminated and the Collateral Trustee has notified the Financial Institution of such termination in writing, countersigned by DOE.

(c) The Collateral Trustee agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Financial Institution upon the request of the Debtor on or after the termination of the Collateral Trustee's security interest in the Blocked Account.

(d) On or within two (2) Business Days (or such longer period as the Collateral Trustee may agree in writing) of the effective date of a termination of this Agreement by the Financial Institution pursuant to Section 5.2(a), the Financial Institution agrees to transfer all funds and property in the Blocked Account, less any amounts then owing to Financial Institution, to such party and account as shall be directed by the Collateral Trustee in writing, countersigned by DOE.

(e) The termination of this Agreement shall not terminate the Blocked Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Blocked Account.

5.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile or electronic transmission shall, upon request of the Collateral Trustee, be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

If to the Debtor:

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Financial Officer
Telephone No.: (650) 701-2690
Facsimile No.: (650) 701-2612
Email Address: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel

Telephone: (650) 413-4000
Facsimile: (650) 701-2620
Email: generalcounseldoe@teslamotors.com

If to the Financial Institution:

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

with a copy to:

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

If to the Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

5.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Debtor may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Financial Institution and the Collateral Trustee. The Financial Institution may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Collateral Trustee, which consent will not be unreasonably withheld or delayed; *provided, however*, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting the Financial Institution. The Collateral Trustee may transfer its rights and duties under this Agreement to (a) a transferee to which, by contract or operation of law, the Collateral Trustee transfers substantially all of its rights and duties under the financing or other arrangements between the Collateral Trustee and the Debtor, or (b) if the Collateral Trustee is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative.

5.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

5.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)). Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

[no further text on this page; signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Blocked Account Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____
Name:
Title:

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION,
as Financial Institution

By: _____
Name:
Title:

EXHIBIT A
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Tesla Motors, Inc.]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Withdrawal Request

Ladies and Gentlemen:

As referenced in the Blocked Account Control Agreement (the "Agreement"), dated as of January [__], 2010 among TESLA MOTORS, INC., as debtor (the "Debtor"), you and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee"), we hereby request withdrawal(s) set forth below from securities account in the name "ATVM Tesla [Dedicated][Initial Debt Service] Account" number [_____] (the "Blocked Account"), to be apportioned as set forth herein.

The aggregate requested withdrawal from the Blocked Account is $[_____] (the "Aggregate Withdrawal Amount").

[INSERT THE BELOW FOR WITHDRAWALS FROM THE DEDICATED ACCOUNT]

EXHIBIT P-A-1

A. The portion of the Aggregate Withdrawal Amount which relates to Project P is $[_____] (the "Project P Withdrawal Amount").

1. The portion of the Project P Withdrawal Amount to be withdrawn from the Equity Proceeds Subaccount is $[_____], and

2. The portion of the Project P Withdrawal Amount to be withdrawn from the Project P Interim True-Up Subaccount is $[_____].

3. The portion of the Project P Withdrawal Amount to be withdrawn from the Project P Designated Overrun Subaccount is $[_____].

B. The portion of the Aggregate Withdrawal Amount which relates to Project S is $[_____] (the "Project S Withdrawal Amount").

1. The portion of the Project S Withdrawal Amount to be withdrawn from the Equity Proceeds Subaccount is $[_____], and

2. The portion of the Project S Withdrawal Amount to be withdrawn from the Project S Interim True-Up Subaccount is $[_____].

3. The portion of the Project S Withdrawal Amount to be withdrawn from the Project S Designated Overrun Subaccount is $[_____].

C. The portion of the Aggregate Withdrawal Amount to be withdrawn from the Investment Earnings Subaccount is $[_____].

[INSERT THE BELOW FOR WITHDRAWALS FROM THE INITIAL DEBT SERVICE ACCOUNT]

A. The portion of the Aggregate Withdrawal Amount which relates to Note P is $[_____] (the "Project P Withdrawal Amount").

1. The portion of the Project P Withdrawal Amount which relates to the Note Installment due with respect to Note P on [March][June] 15, 2013 (the "Applicable Initial Debt Service Payment Date") is $[_____].

2. The portion of the Project P Withdrawal Amount which relates to interest due and payable on Note P on the Applicable Initial Debt Service Payment Date is $[_____].

B. The portion of the Aggregate Withdrawal Amount which relates to Note S is $[_____] (the "Project S Withdrawal Amount").

1. The portion of the Project S Withdrawal Amount which relates to the Note Installment due with respect to Note S on the Applicable Initial Debt Service Payment Date is $[_____].

2. The portion of the Project S Withdrawal Amount which relates to interest due and payable on Note S on the Applicable Initial Debt Service Payment Date is $[_____].

All amounts withdrawn from the Initial Debt Service Account under Section A and B above shall be paid directly to the account of the Federal Financing Bank as set forth below:

_____
_____
_____]

[C. The portion of the Aggregate Withdrawal Amount which relates to earnings or dividends with respect to the funds and securities in the Blocked Account to be withdrawn and paid to the Debtor is $[_____].]

[INSERT THE BELOW FOR ALL REQUESTS]

The authorizations set forth herein shall not be deemed to authorize you to accept any direction or entitlement orders with respect to the Blocked Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to the Collateral Trustee in accordance with the notice provisions set forth in Section 5.3 of the Agreement.

The authorization set forth in this Withdrawal Request shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

[no further text on this page; signatures follow]

Very truly yours,

TESLA MOTORS, INC.,
as Debtor

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Midland Loan Services, Inc.

EXHIBIT B
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Tesla Motors, Inc.]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Transfer Request

Ladies and Gentlemen:

As referenced in the Blocked Account Control Agreement (the "Agreement"), dated as of January [__], 2010 among TESLA MOTORS, INC., as debtor (the "Debtor"), you and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee"), we hereby request the transfer(s) of funds from the applicable subaccount(s) within securities account in the name "ATVM Tesla Dedicated Account" with number [_____] (the "Blocked Account") into the [other subaccounts within the Blocked Account][the securities account in the name "ATVM Tesla Initial Debt Service Account" with number [_____]][1] as set forth below.

[1] Use the second alternative only for transfers into the Initial Debt Service Account.

[INSERT FOR TRANSFERS IN CONNECTION WITH AN EXCESS COST OVERRUN CURE]

A. Transfers to Project P Designated Overrun Subaccount.

1. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Project P Designated Overrun Subaccount.

2. A transfer in the amount of $[_____] to be made from the Project P Interim True-Up Subaccount to the Project P Designated Overrun Subaccount.

B. Transfers to Project S Designated Overrun Subaccount.

1. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Project S Designated Overrun Subaccount.

2. A transfer in the amount of $[_____] to be made from the Project S Interim True-Up Subaccount to the Project S Designated Overrun Subaccount.

[INSERT FOR TRANSFERS IN CONNECTION WITH FINAL COMPLETION OF BOTH PROJECTS]

A. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Initial Debt Service Account.

[INSERT THE BELOW FOR ALL REQUESTS]

The authorizations set forth herein shall not be deemed to authorize you to accept any direction or entitlement orders with respect to the Blocked Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to the Collateral Trustee in accordance with the notice provisions set forth in Section 5.3 of the Agreement.

[no further text on this page; signatures follow]

Very truly yours,

TESLA MOTORS, INC.,
as Debtor

By: _____
Name:
Title:

cc: Midland Loan Services, Inc.

EXHIBIT C
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Termination of Blocked Account Control Agreement

You are hereby notified that the Blocked Account Control Agreement, dated as of January [__], 2010 among TESLA MOTORS, INC. (the "Debtor"), you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous entitlement orders to you, you are hereby instructed to accept all future directions with respect to account in the name "ATVM Tesla [Dedicated][Initial Debt Service] Account" with number(s) [_____] from the Debtor.

This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to the Debtor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to the Debtor in accordance with the notice provisions set forth in Section 5.3 of the Blocked Account Control Agreement.

The authorization set forth in this Termination Notice shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

Very truly yours,

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Tesla Motors, Inc.

EXHIBIT D
TO BLOCKED ACCOUNT CONTROL AGREEMENT

INVESTMENTS PERMITTED IN CONNECTION WITH SECTION 4.6

Any of the following:

(i) (x) marketable securities that are direct obligations of the United States (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) or obligations the timely payment of principal and interest of which is fully guaranteed by the United States, in each case maturing not more than ninety (90) days from the date of the acquisition thereof by (or on behalf of) the Debtor, or (y) marketable securities that are obligations issued by, or the timely payment of principal and interest is fully guaranteed by, any agency or instrumentality of the United States, the obligations of which are backed by the full faith and credit of the United States, in each case maturing not more than 360 days from the date of acquisition thereof by (or on behalf of) the Debtor; *provided* that with respect to any single agency or instrumentality, the investments permitted under clause (i)(y) shall at no time exceed 5% of the Blocked Account;

(ii) shares of any money market mutual fund that (x) has at least ninety-five percent (95%) of its assets invested continuously in obligations of the type described in clause (i), (y) has net assets of not less than $500,000,000 and (z) has the highest rating obtainable from S&P and Moody's;

(iii) fully collateralized repurchase agreements with a term of not more than thirty (30) days for obligations of the type described in clause (i) above and entered into with a financial institution satisfying the criteria described in clause (iv) below;

(iv) for an investment period of no longer than thirty (30) days, demand deposits of any commercial bank that (x) is organized under the laws of the United States or any State thereof, (y) is subject to supervision and examination by federal or state banking authorities and (z) has the highest rating obtainable from S&P and Moody's; and

(v) the Fidelity Funds, Government Fund, class three shares, CUSIP: 316175603.

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

[FORM OF] LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans,
and Cooperative Agreements

[_____], 20[__]

We refer to the Loan Arrangement and Reimbursement Agreement (the "Arrangement Agreement"), dated as of January 20, 2010, between TESLA MOTORS, INC., a Delaware corporation (the "Borrower") and the UNITED STATES DEPARTMENT OF ENERGY. Terms defined in the Arrangement Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to Section 5.1(u) of the Arrangement Agreement, the undersigned [ ], the [insert title of Responsible Officer] of the Borrower, to the best of his or her knowledge and belief, and in his or her capacity as an officer of the Borrower and not in his or her individual capacity, hereby certifies as follows:

1. I am the duly elected [insert title of Responsible Officer] of the Borrower;

2. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.

Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

TESLA MOTORS, INC.

By: _____
Name:
Title:

EXHIBIT Q-2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

Approved by OMB
0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U S C section 1352 The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate Complete all items that apply for both the initial filing and material change report Refer to the implementing guidance published by the Office of Management and Budget for additional information

1 Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action

2 Identify the status of the covered Federal action

3 Identify the appropriate classification of this report If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred Enter the date of the last previously submitted report by this reporting entity for this covered Federal action

4 Enter the full name, address, city, State and zip code of the reporting entity Include Congressional District, if known Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient Identify the tier of the subawardee, e g , the first subawardee of the prime is the 1st tier Subawards include but are not limited to subcontracts, subgrants and contract awards under grants

5 If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient Include Congressional District, if known

6 Enter the name of the Federal agency making the award or loan commitment Include at least one organizational level below agency name, if known For example, Department of Transportation, United States Coast Guard

7 Enter the Federal program name or description for the covered Federal action (item 1) If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments

8 Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e g , Request for Proposal (RFP) number Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency) Include prefixes, e g , "RFP-DE-90-001 "

9 For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5

10 (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a) Enter Last Name, First Name, and Middle Initial (MI)

11 Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10) Indicate whether the payment has been made (actual) or will be made (planned) Check all boxes that apply If this is a material change report, enter the cumulative amount of payment made or planned to be made

12 Check the appropriate box(es) Check all boxes that apply If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment

13 Check the appropriate box(es) Check all boxes that apply If other, specify nature

14 Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered Include all preparatory and related activity, not just time spent in actual contact with Federal officials Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted

15 Check whether or not a SF-LLLA Continuation Sheet(s) is attached

16 The certifying official shall sign and date the form, print his/her name, title, and telephone number

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

FORM OF BORROWER CERTIFICATE
(For Closing)

(Delivered pursuant to Section 5.1 of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: [_____ __, 20__]

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Borrower Certificate is delivered to you pursuant to Section 5.1 of the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "Arrangement Agreement"), by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Borrower Certificate shall have their respective meanings specified in the Arrangement Agreement.

On behalf of the Borrower, I, Deepak Ahuja, HEREBY CERTIFY that I am the duly elected and qualified Chief Financial Officer of the Borrower and FURTHER CERTIFY that, as of the date hereof:

1. Pursuant to Section 5.1(e) of the Arrangement Agreement, the updated Information Certificate substantially in the form of the original version thereof executed and delivered on June 23, 2009, together with a comparison showing all changes from such original version, was delivered to DOE on or prior to January 20, 2010, and all information disclosed thereon remains true and correct on and as of the date hereof.

2. Pursuant to Section 5.1(f)(i) of the Arrangement Agreement, the information contained in the Application, together with all other information delivered by or on behalf of the Borrower or any Subsidiary in connection with such Application and the negotiation of the Transaction Documents, including the Information Certificate and the Collateral Schedules, is true and complete in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements were made (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified);

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

3. Pursuant to Section 5.1(f)(ii) of the Arrangement Agreement, no event has occurred that has caused (x) the Borrower to cease to be an Eligible Applicant, as defined in the Applicable Regulations, or (y) any Project to cease to be an Eligible Project, as defined in the Applicable Regulations;

4. Pursuant to Section 5.1(i) of the Arrangement Agreement, (i) neither the Borrower nor any of its Subsidiaries has a judgment lien against any of their respective properties for a debt owed to the United States of America and (ii) neither the Borrower nor any of its Subsidiaries has an outstanding debt (other than a debt under the Code) owed to the United States of America or any agency thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R.§ 285.13(d);

5. Pursuant to Section 5.1(j) of the Arrangement Agreement, (x) no Indebtedness of the Borrower or any Subsidiary is outstanding other than Indebtedness permitted under clauses (b) and (e) of Section 9.2 of the Arrangement Agreement and other Indebtedness permitted by Section 9.2 of the Arrangement Agreement to the extent described on Schedule D-4 to the Information Certificate, (y) the existing agreements in favor of City National Bank have been amended to limit the Liens created by such agreements to the equipment and restricted deposits identified on Schedule D-4 to the Information Certificate and (z) Wells Fargo Bank, National Association shall have consented to the Collateral Trustee's Lien on the Borrower's previously unencumbered and unrestricted liquid assets;

6. Pursuant to Section 5.1(o) of the Arrangement Agreement, all Governmental Approvals and other consents, approvals and waivers listed on Schedule 6.6 to the Information Certificate that are required to be obtained on or prior to the Principal Instrument Delivery Date, each in form and substance satisfactory to DOE, have been duly obtained, (ii) true and complete copies thereof are attached to the Secretary's Certificate of Borrower or have otherwise been delivered to DOE on or prior to the date hereof, and (iii) such consents, approvals and waivers are in full force and effect and that all applicable waiting periods have expired without any action being taken or threatened which would restrain, prevent or otherwise impose adverse conditions on the Borrower;

7. Pursuant to Section 5.1(q) of the Arrangement Agreement, Borrower and its Subsidiaries own or have the right to use all Intellectual Property necessary for the Projects;

8. Pursuant to Section 5.1(r) of the Arrangement Agreement, attached hereto as Exhibit 5.1(r) is the Borrower's strategy with respect to foreign exchange which the Borrower believes to be commercially reasonable;

9. Pursuant to Section 5.1(s) of the Arrangement Agreement, (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds

of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S, and (iii) the Cash Equity Condition is satisfied;

10. Pursuant to Section 5.1(v) of the Arrangement Agreement, each of the representations and warranties made by the Borrower and Tesla Motors New York LLC in or pursuant to the Loan Documents is true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties are true and correct in all respects) on and as of the date hereof; and

11. Pursuant to Section 5.1(x) of the Arrangement Agreement, attached hereto as Exhibit 5.1(x) is the Deer Creek Lease, and such lease has not been amended, modified, terminated, or supplemented since August 6, 2009.

12. Pursuant to Annex A of the Arrangement Agreement, attached hereto as Exhibit A is the Authorized Transmitter Schedule.

IN WITNESS WHEREOF, the undersigned has executed this Borrower Certificate as of the date first written above.

TESLA MOTORS, INC.

By: _____

Name: _____

Title: _____[1]

---

[1] To be executed by a Responsible Officer

Exhibit 5.1(r)

Foreign Exchange Strategy

[See attached]

Exhibit 5.1(x)

Deer Creek Lease

[See attached]

Exhibit A

Authorized Transmitters

Name	Title	Email

Exhibit S-2 to the
Arrangement Agreement

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

FORM OF BORROWER CERTIFICATE
(For Financial Documents Delivered at Closing)

(Delivered pursuant to Sections 5.1(l), 5.1(m) and 5.1(n) of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: [_____ __, 20__]

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Borrower Certificate is delivered to you pursuant to Sections 5.1(l), 5.1(m) and 5.1(n) of the Loan Arrangement and Reimbursement Agreement (the "Arrangement Agreement") dated as of January 20, 2010 by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Borrower Certificate shall have their respective meanings specified in the Arrangement Agreement.

On behalf of the Borrower, I, Deepak Ahuja, HEREBY CERTIFY that I am the duly elected and qualified Chief Financial Officer of the Borrower and FURTHER CERTIFY that, as of the date hereof:

1. Pursuant to Section 5.1(l)(i) of the Arrangement Agreement, the Historical Financial Statements delivered to DOE on or prior to January 20, 2010 and attached hereto as Exhibit 5.1(l)(i), fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in accordance with GAAP applied on a basis consistent with prior years, subject, in the case of unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments;

2. Pursuant to Section 5.1(l)(ii) of the Arrangement Agreement, attached hereto as Exhibit 5.1(l)(ii) and delivered to DOE on or prior to January 20, 2010 are computations in reasonable detail demonstrating that, based on the Historical Financial Statements, the Borrower would have been in compliance with the covenants set forth in subsection (c) of Annex 9.1 of the Arrangement Agreement on the date hereof, as calculated (A) with respect to the Current Ratio, as of September 30, 2009 and (B) with respect to the Cash Balance, on a *pro forma* basis as of November 30, 2009, after giving effect to the expected initial Advance under the Notes as if it had been made on October 30, 2009; *provided that,* solely for the purposes of the certification and calculations required by Section 5.1(l)(ii) of the Arrangement Agreement, the covenants set forth in such subsection (c) of Annex 9.1 of the Arrangement Agreement shall be deemed to apply to the periods described in (A) and (B) above;

3. Pursuant to Section 5.1(m) of the Arrangement Agreement, the business plan delivered to DOE on or prior to January 20, 2010 and attached hereto as Exhibit 5.1(m) contains all of the information required under Section 5.1(m) and is based on good faith estimates and assumptions made by management of the Borrower and management of the Borrower believes that such business plan is reasonable and attainable;

4. Pursuant to Section 5.1(n) of the Arrangement Agreement, attached hereto as Exhibit 5.1(n)-1 is a schedule of Historical Costs, and such schedule is true and complete; and

5. Pursuant to Section 5.1(n) of the Arrangement Agreement, attached hereto as Exhibit 5.1(n)-2 is a schedule of Eligible Project Costs incurred on or after December 15, 2008 through September 30, 2009, and such schedule is true and complete in all material respects.

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

IN WITNESS WHEREOF, the undersigned has executed this Borrower Certificate as of the date first written above.

TESLA MOTORS, INC.

By: _____

Name: _____

Title: _____[1]

---

[1] To be executed by a Responsible Officer

***CONFIDENTIAL** - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit 5.1(l)(i)

Historical Financial Statements

[See attached]

EXHIBIT S-2-4

Exhibit 5.1(l)(ii)

Computations showing Pro Forma Covenant Compliance

[See attached]

Exhibit 5.1(m)

Business Plan

[See attached]

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Exhibit 5.1(n)-1

Historical Costs

[See attached]

EXHIBIT S-2-7

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Exhibit 5.1(n)-2

Eligible Project Costs

[See attached]

PROGRAM FINANCING AGREEMENT dated as of September 16, 2009, by and between the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, and the **SECRETARY OF ENERGY** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Program Authority (as hereinafter defined), to carry out a program that provides for loans that meet the requirements of the Program Authority; and

WHEREAS, FFB is authorized, pursuant to the Program Authority, to make loans under the Secretary's program; and

WHEREAS, FFB and the Secretary desire now to enter into an agreement to provide the terms and conditions under which FFB will make loans under the Secretary's program.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, FFB, and the Secretary agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

As used in this Agreement, the following terms shall have the respective meanings specified in this section 1.1, unless the context clearly requires otherwise.

"Advance" shall mean an advance of funds made by FFB under a Note that is purchased by FFB under any Note Purchase Agreement entered into under this Agreement.

"Advance Identifier" shall mean, for each Advance, the particular sequence of letters and numbers constituting the Note Identifier plus the particular sequence of additional numbers assigned by FFB to the respective Advance in the interest rate confirmation notice relating to such Advance delivered by FFB in accordance with section 7.7 of the Note Purchase Agreement relating to the Note under which such Advance is made.

"Advance Request" shall mean a letter from a Borrower requesting an Advance under a Note, in the form of letter attached as Exhibit A to the form of Note Purchase Agreement attached as Annex 3 to this Agreement.

"Advance Request Approval Notice" shall mean the written notice from the Department located at the end of an Advance Request advising FFB that such Advance Request has been approved on behalf of the Secretary.

"Borrower" shall mean an entity designated by the Secretary to be a "Borrower" for purposes of this Agreement in a Designation Notice delivered by the Secretary under this Agreement.

"Business Day" shall mean any day on which both FFB and the Federal Reserve Bank of New York are open for business.

"Certificate Specifying Authorized Department Officials" shall mean a certificate specifying the names

and titles of those officials of the Department who are authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the original signature of each of those authorized officials, and specifying the name and title of those officials of the Department who are authorized to confirm telephonically the authenticity of the Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the telephone number of each of those authorized officials, in the form of the Certificate Specifying Authorized Department Officials attached as Annex 1 to this Agreement.

"Department" shall mean the Department of Energy.

"Designation Notice" shall mean a written notice from the Secretary to FFB and the particular entity identified therein as the respective "Borrower," designating that entity to be a "Borrower" for purposes of this Agreement, in the form of notice that is attached as Annex 2 to this Agreement.

"Initial Note" or "Initial Notes" shall mean the first Note or, if more than one Note is offered at the same time, the first Notes offered by any Borrower for purchase under a Note Purchase Agreement entered into under this Agreement.

"Maturity Date" shall have the meaning specified in section 2.2(h) of this Agreement.

"Note" shall mean a future advance promissory note (or other similar debt instrument approved by FFB and the Secretary) issued by a Borrower payable to FFB, in the form of Note that is attached as Exhibit C to the form of Note Purchase Agreement that is attached as Annex 3 to this Agreement, as such Note may be amended, supplemented, and restated from time to time in accordance with its terms.

"Note Identifier" shall mean, with respect to each Note purchase under a Note Purchase Agreement, the particular sequence of letters and numbers assigned by FFB to the respective Note in the Principal Instruments acceptance notice relating to such Note delivered by FFB in

accordance with section 5.1 of the Note Purchase Agreement relating to such Note.

"Note Purchase Agreement" shall mean a Note Purchase Agreement among FFB, a Borrower, and the Secretary setting forth the terms and conditions of the agreement of FFB to purchase a particular Note or Notes to be issued by the respective Borrower, in the form of agreement that is attached as Annex 3 to this Agreement, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Opinion of Secretary's Counsel re: Program Financing Agreement" shall mean an opinion of counsel from counsel to the Secretary, substantially in the form of opinion that is attached as Annex 4 to this Agreement.

"Payment Date" shall have the meaning specified in section 2.2(i) of this Agreement.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or governmental authority.

"Program Authority" shall mean section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended from time to time, including as amended by section 129 of Division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578).

"Program Financing Commitment Amount" shall mean $25,000,000,000.

"Program Financing Commitment Termination Date" shall mean September 30, 2010, subject to extensions thereof permitted by section 8.2.2 of this Agreement.

"Secretary's Affirmation" shall mean an affirmation of the Secretary, in the form of affirmation that is attached as Exhibit G to the form of Note Purchase Agreement that is attached as Annex 3 to this Agreement.

"this Agreement" shall mean this Program Financing Agreement dated as of September 16, 2009, between FFB and the Secretary.

Section 1.2 Rules of Interpretation.

Unless the context shall otherwise indicate, the terms defined in section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural. The words "herein," "hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE 2

DESIGNATION OF BORROWERS

Section 2.1 Designating a Borrower.

2.1.1 Time Permitted for Designations. During the period commencing on the date of this Agreement and terminating on the Program Financing Commitment Termination Date, the Secretary shall have the right to designate entities that are to be Borrowers for purposes of this Agreement.

2.1.2 Means of Designation. The Secretary shall make each designation described in section 2.1.1 of this Agreement by delivering a Designation Notice to FFB and the particular entity identified therein as the "Borrower."

Section 2.2 Designation Notices.

Each Designation Notice shall specify, among other things:

(a) the proper legal corporate name of the particular entity identified therein to be a "Borrower" for purposes of this Agreement;

(b) the address of such Borrower for purposes of the delivery of written notices and other communications;

(c) the name, title, telephone number, facsimile number, and email address (if any) of an official of such

Borrower to whom notices and other communications are to be delivered or made;

(d) the maximum principal amount of the loan to be committed to such Borrower, which amount shall also be the aggregate maximum principal amount of the particular Note or Notes that is or are to be issued by such Borrower and offered to FFB for purchase and, if more than one Note is to be issued and offered for purchase, the maximum principal amount of each Note;

(e) the state of incorporation of such Borrower;

(f) the title of all security instruments securing the loan to be made to such Borrower;

(g) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the last day on which an Advance may be made under such Note;

(h) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the date on which such Note and all Advances made thereunder are to mature (such date being the "Maturity Date");

(i) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, whether interest accrued on the outstanding principal balance of each Advance shall be due and payable on a semi-annual or quarterly basis; if on a semi-annual basis, then the particular semi-annual dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other must be the particular calendar date in each year that is six months from such date; and if on a quarterly basis, then the particular quarterly dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other three of which must be the particular calendar dates in each year that are at three-month intervals from such date (each of such dates being a "Payment Date"); and

(j) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the date on

which the first installment of principal is to be payable on such Note, which must be a Payment Date.

Section 2.3 Effect of Designations.

Upon the Secretary's delivery of a Designation Notice to FFB and the particular entity identified therein as the "Borrower":

(a) FFB shall be committed to the Secretary to enter into a Note Purchase Agreement with the particular Borrower identified in the Designation Notice and the Secretary setting forth the terms and conditions under which FFB will purchase one or more Notes issued by such Borrower in the maximum principal amount specified in the respective Designation Notice;

(b) the Secretary shall be committed to FFB to issue the Secretary's Affirmation relating to such Note or Notes; and

(c) FFB shall be committed to the Secretary to purchase such Note or Notes when the terms and conditions specified in the respective Note Purchase Agreement shall have been satisfied.

ARTICLE 3

CONDITIONS TO PURCHASE OF NOTES

Section 3.1 Condition to Purchase of Initial Note Offered for Purchase.

FFB shall be under no obligation to purchase the Initial Note (or Initial Notes) under any Note Purchase Agreement entered into under this Agreement unless and until each of the conditions specified in this section 3.1 (in addition to each of the conditions referred to in section 3.2 of this Agreement) has been satisfied.

3.1.1 Executed Counterpart of this Agreement. FFB shall have received an original counterpart of this Agreement, duly executed by or on behalf of the Secretary.

3.1.2 Opinion of Secretary's Counsel Regarding this Agreement. FFB shall have received an Opinion of Secretary's Counsel re: Program Financing Agreement.

3.1.3 Certificate Specifying Authorized Department Officials. FFB shall have received a Certificate Specifying Authorized Department Officials.

Section 3.2 Conditions to Purchase of Every Note Offered for Purchase.

The Secretary acknowledges that FFB shall be under no obligation to purchase any Note offered by a Borrower to FFB for purchase unless and until each of the conditions specified in this Agreement and the particular Note Purchase Agreement relating to such Note or Notes, as being conditions to purchasing such Note or Notes, has been satisfied.

ARTICLE 4

OFFER AND PURCHASE OF NOTES

Section 4.1 Offer of Notes for Purchase.

Each Note that is to be offered to FFB for purchase shall be offered in accordance with the provisions of the particular Note Purchase Agreement relating to the respective Note.

Section 4.2 Purchase of Notes.

Each Note that is to be purchased by FFB shall be purchased in accordance with the provisions of the particular Note Purchase Agreement relating to the respective Note.

ARTICLE 5

DUTIES AND RIGHTS OF THE SECRETARY AS ISSUER OF SECRETARY'S AFFIRMATIONS

Section 5.1 Duties.

In consideration of FFB's commitment to purchase Notes under Note Purchase Agreements and thereby make loans under the Secretary's program, the Department agrees to perform all accounting and other requirements related to such loans arising out of the Federal Credit Reform Act of 1990, as amended (codified at 2 U.S.C. § 661 et seq.).

Section 5.2 Rights.

In consideration of the particular Secretary's Affirmation relating to any Note that has been purchased by FFB under a Note Purchase Agreement, the Secretary shall have the sole authority (vis-a-vis FFB), if such Note is in default, in respect of acceleration of such Note, the exercise of other available remedies, and the disposition of sums or property recovered.

ARTICLE 6

AGREEMENTS AND OTHER RIGHTS OF THE SECRETARY AND THE DEPARTMENT

Section 6.1 Delivery of Replacement Certificates Specifying Authorized Department Officials.

6.1.1 Annual Replacement Certificates. Promptly after the commencement of each fiscal year, the Department shall deliver to FFB a Certificate Specifying Authorized Department Officials, updated as appropriate, in replacement of the original such certificate delivered pursuant to section 3.1.3 hereof.

6.1.2 Replacement Certificates within any Fiscal Year. The Department may at any time within any fiscal year deliver to FFB a revised Certificate Specifying Authorized Department Officials, updated as appropriate, in

replacement of the annual certificate delivered pursuant to section 6.1.1 hereof.

Section 6.2 Certain Agreements of the Secretary and FFB.

6.2.1 Agent for Compliance Purposes. In the event that FFB shall become subject to any duties under any applicable law or regulation solely because of its providing or having provided financing under a Note purchased under a Note Purchase Agreement entered into under this Agreement, the Secretary shall serve as agent for FFB to the fullest extent permitted under that law or regulation in connection with satisfying the requirements of that law or regulation.

6.2.2 Secretary's Agreement Regarding His Appointment as Agent for FFB. Recognizing the legitimate needs of FFB to ensure that the Secretary, as compliance agent for FFB, has performed all duties to which FFB becomes subject under any applicable law or regulation solely because of providing or having provided financing under a Note purchased under a Note Purchase Agreement entered into under this Agreement, and with the Secretary and FFB expressing their intent to cooperate in connection with the exchange of information related thereto, the Secretary agrees:

(a) to deliver to representatives of FFB or its designate, when requested to do so by FFB or its designate, actual possession of the original of any certificate, report, document or paper collected or prepared by the Secretary, as compliance agent for FFB; or

(b) at the option of FFB, to permit representatives of FFB or its designate, during reasonable business hours, to have access to, and to inspect and make copies of, any and all certificates, reports, documents or papers collected or prepared by the Secretary, as compliance agent for FFB.

6.2.3 Litigation Cooperation. When requested to do so by FFB, the Secretary shall cooperate with FFB in the prosecution or defense of any litigation that FFB may institute against any Person other than the Secretary or to

which FFB is named as a party, as the case may be, arising out of FFB providing or having provided financing under a Note or Notes purchased under a Note Purchase Agreement entered into under this Agreement.

Section 6.3 Reimbursement.

6.3.1 Secretary's Agreement to Reimburse. To the extent permitted by applicable law and subject to the availability of funds, the Secretary agrees to reimburse FFB (but not any successor, assignee or transferee of FFB) for any and all liabilities, losses, costs or expenses of any nature that may be imposed upon, incurred by or asserted against FFB by any Person other than the Secretary in any way relating to or arising out of FFB providing or having provided financing under a Note or Notes purchased under a Note Purchase Agreement entered into under this Agreement, but specifically excluding any liability, loss, cost or expense relating to or arising out of any sale, assignment or other transfer by FFB, pursuant to section 13.4 of a Note Purchase Agreement, of all or any part of any Note that has been purchased by FFB under the respective Note Purchase Agreement.

6.3.2 Secretary's Agreement to Seek Appropriations. In the event that no funds are available to the Secretary at the time that the Secretary needs funds to reimburse FFB as contemplated by section 6.3.1 hereof, the Secretary agrees that it will diligently seek to obtain additional appropriations for that purpose.

6.3.3 FFB's Agreement to Deliver Notice. Solely for the purpose of assisting the Secretary in mitigating the extent of any reimbursement contemplated by section 6.3.1 hereof, FFB agrees that it will deliver notice to the Secretary of any and all liabilities, losses, costs or expenses imposed upon, incurred by or asserted against FFB promptly after FFB has actual knowledge of the imposition, incurrence or assertion of such liability, loss, cost or expense.

Section 6.4 Effect of Secretary's Nonperformance.

In the event that the Secretary shall fail to fulfill any of his or her agreements in this article 6, FFB shall nevertheless continue:

(a) to make Advances under Notes that have been purchased under any Note Purchase Agreement before the date of the respective failure; and

(b) to purchase Notes that are issued by Borrowers that have been designated by the Secretary, before the date of the respective failure, to be Borrowers for purposes of this Agreement.

Section 6.5 Right of the Secretary to Purchase Advances and Notes.

Notwithstanding the provisions of any Note that has been purchased by FFB from a Borrower under a Note Purchase Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under such Note, or may purchase from FFB such Note in its entirety, in either case in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the terms of such Note, to a repurchase by such Borrower of all or any portion of any Advance that has been made under such Note, or such Note in its entirety.

ARTICLE 7

EFFECTIVE DATE, TERM, SURVIVAL

Section 7.1 Effective Date.

This Agreement shall be effective as of the date first above written.

Section 7.2 Term of Commitment to Purchase Notes.

The obligation of FFB to enter into Note Purchase Agreements under this Agreement shall expire on the Program

Financing Commitment Termination Date, subject to extensions thereof as provided in section 8.2.2 hereof.

Section 7.3 Survival.

7.3.1 Representations and Certifications. All representations and certifications made by the Secretary in this Agreement, or in any agreement, instrument or certificate delivered pursuant hereto, shall survive the execution and delivery of this Agreement and the entering into Note Purchase Agreements as provided in this Agreement.

7.3.2 Remainder of this Agreement. Notwithstanding the occurrence and passage of the Program Financing Commitment Termination Date or the termination by mutual agreement of the commitment of FFB to enter into Note Purchase Agreements with Borrowers designated by the Secretary, all provisions of this Agreement other than articles 2, 3, and 4 shall remain in full force and effect until payment of all amounts due under all of the Notes that have been purchased by FFB under any Note Purchase Agreement entered into under this Agreement. Without limiting the foregoing, FFB expressly acknowledges that FFB's commitment to make Advances under any Note that is purchased under a Note Purchase Agreement that is entered into as provided in this Agreement before the Program Financing Commitment Termination Date shall not lapse or expire upon the occurrence and passage of the Program Financing Commitment Termination Date.

ARTICLE 8

MISCELLANEOUS

Section 8.1 Notices.

8.1.1 Addresses of the Parties. All notices and other communications that are required by the terms of this Agreement to be in writing shall be addressed as follows:

To FFB:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Telephone No. (202) 622-2470
Facsimile No. (202) 622-0707

To the Secretary:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Telephone No. (202) 586-8146
Facsimile No. (202) 586-7809

Copies of all legal notices and correspondence should also be sent to:

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone No. (202) 586-5281
Facsimile No. (202) 586-1499

The address, telephone number, or facsimile number for either party may be changed at any time and from time to time upon written notice given by such changing party to the other party hereto.

8.1.2 Permitted Means of Delivery. Advance Requests, notices, and other communications to FFB may be delivered by facsimile (fax) transmission of the executed instrument.

8.1.3 Effective Date of Delivery. A properly addressed notice or other communication shall be deemed to have been "delivered" for purposes of this Agreement:

(a) if made by personal delivery, on the date of such personal delivery;

(b) if mailed by first class mail, registered or certified mail, express mail, or by any commercial overnight courier service, on the date that such mailing is received;

(c) if sent by facsimile (fax) transmission:

(1) if the transmission is received and receipt confirmed before 4:00 p.m. (Washington, DC, time) on any Business Day, on the date of such transmission;

(2) if the transmission is received and receipt confirmed after 4:00 p.m. (Washington, DC, time) on any Business Day or on any day that is not a Business Day, on the next Business Day.

8.1.4 Notices to FFB to Contain FFB Identification References. All notices to FFB making any reference to any Note purchased under a Note Purchase Agreement or any Advance made under any Note purchased under a Note Purchase Agreement shall identify such Note or such Advance by the respective Note Identifier or the respective Advance Identifier, as the case may be, assigned by FFB to such Note or such Advance.

Section 8.2 Amendments.

8.2.1 Written Instruments Required. No provision of this Agreement may be amended, modified, supplemented, waived, discharged, or terminated orally but only by an instrument in writing duly executed by the parties hereto.

8.2.2 To Extend Program Financing Commitment Termination Date. FFB agrees that, upon the request of the Secretary, it will negotiate in good faith amendments to this Agreement to extend the Program Financing Commitment Termination Date.

8.2.3 Commitment to Make Advances under Purchased Notes Unaffected by Program Financing Commitment Termination Date. Notwithstanding the occurrence and passage of the Program Financing Commitment Termination Date relating to the commitment to purchase a Note or Notes under a Note Purchase Agreement that FFB has entered into under this Agreement, FFB acknowledges that the commitment to make Advances under a Note that FFB has purchased under such a Note Purchase Agreement before the Program Financing Commitment Termination Date shall not lapse or expire upon the occurrence and passing of the Program Financing Commitment Termination Date.

Section 8.3 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of each of FFB and the Secretary, and each of their respective successors and assigns.

Section 8.4 Rights Confined to Parties.

Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give to, any Person other than FFB and the Secretary, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements contained herein shall be for the sole and exclusive benefit of FFB and the Secretary, and their respective successors and permitted assigns.

Section 8.5 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality.

Section 8.6 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.7 Headings.

The descriptive headings of the various articles, sections, and subsections of this Agreement were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 8.8 Counterparts.

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, FFB and the Secretary have caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: Richard L. Gregg

Name: Richard L. Gregg

Title: Vice President

SECRETARY OF ENERGY
(the "Secretary")
acting through his
duly authorized designate

By: _____

Name: Lachlan Seward

Title: Director, Advanced Technology Vehicles Loan Manufacturing Program

IN WITNESS WHEREOF, FFB and the Secretary have caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: _____

Name: Richard L. Gregg

Title: Vice President

SECRETARY OF ENERGY
(the "Secretary")
acting through his
duly authorized designate

By: 

Name: Lachlan Seward

Title: Director, Advanced Technology Vehicles Loan Manufacturing Program

DOE (ATV)

CERTIFICATE SPECIFYING AUTHORIZED DEPARTMENT OFFICIALS

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Reference is made to the Program Financing Agreement dated as of September 16, 2009, between the Federal Financing Bank ("FFB") and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Program Financing Agreement.

This Certificate Specifying Authorized Department Officials is delivered to FFB pursuant to section 3.1.3 of the Program Financing Agreement.

1. The undersigned, on behalf of the Secretary, hereby certifies that:

a. each of the individuals named below is the duly qualified and incumbent official of Department of Energy holding the position title set out opposite the respective individual's name;

b. each of the individuals named below is authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary; and

c. the signature of each such individual set out opposite the respective individual's name and title is the genuine signature of such individual:

DOE (ATV)

Name	Title	Signature
Owen Barwell	Deputy Chief Financial Officer	_____
Lachlan W. Seward	Director, Advanced Technology Vehicles Manufacturing Loan Program	_____
William Clay Sumner	Senior Investment Officer	_____

2. The undersigned, on behalf of the Secretary, hereby certifies that:

a. each of the individuals named below is the duly qualified and incumbent official of the Department of Energy holding the position title set out opposite the respective individual's name;

b. each of the individuals named below is authorized to confirm telephonically the authenticity of Advance Request Approval Notices from time to time on behalf of the Secretary; and

c. the telephone number of each such individual is set out opposite the respective individual's name and title:

Name	Title	Telephone Number
Michael A. Mates	Financial Operations Officer, Advanced Technology Vehicles Manufacturing Loan Program	(202) 586-1565
Robert H. Edwards, Jr.	Deputy General Counsel for Energy Policy	(202) 586-6758
Daniel Cohen	Assistant General Counsel for Legislation and Regulatory Law	(202) 586-9523

DOE (ATV)

Jason Gerbsman	Senior Investment Officer	(202) 586-4043

The undersigned certifies that the undersigned has been authorized to execute this Certificate Specifying Authorized Department Officials on behalf of the Secretary and to deliver it to FFB, and that this authority is valid and in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate Specifying Authorized Department Officials and caused it to be delivered to FFB.

SECRETARY OF ENERGY
acting through his
duly authorized designate

Signature: _____

Print Name: Lachlan W. Seward

Title: Director, Advanced Technology Vehicles Manufacturing Loan Program

Date: _____

DESIGNATION NOTICE

NOTICE TO:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

[Name of Borrower]
[Address of Borrower]

Attention: [Name of Contact Official]
[Title]

Reference is made to the Program Financing Agreement dated as of September 11, 2009, between the Federal Financing Bank ("FFB") and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to such terms in the Program Financing Agreement.

Pursuant to article 2 of the Program Financing Agreement, the Secretary hereby notifies FFB and the entity identified below that the Secretary has designated that entity to be a "Borrower" for purposes of the Program Financing Agreement (such entity being referred to herein as the "Borrower"):

(a) The proper legal corporate name of the Borrower is as follows:

[Name of Borrower].

(b) The address of the Borrower for purposes of the delivery of written notices and other communications is as follows:

[Address of Borrower]
_____
_____
_____.

(c) The name, title, telephone number, and facsimile number of an official of such Borrower to whom notices and other communications are to be delivered or made is as follows:

[Name of Contact Official]
[Title]

Telephone No.: (___) ___-____
Facsimile No.: (___) ___-____
Email Address: _____

Subject to the provisions of the Program Financing Agreement, this designation: (a) commits FFB to enter into a Note Purchase Agreement with the Borrower and the Secretary setting forth the terms and conditions under which FFB will purchase one or more notes issued by the Borrower in the aggregate maximum principal amount specified herein; (b) commits the Secretary to issue the Secretary's Affirmation respecting such note or notes; and (c) commits FFB to purchase such note or notes when the terms and conditions specified in the respective Note Purchase Agreement have been satisfied.

The Secretary hereby specifies the following information to be used for the preparation of the Note Purchase Agreement and the note or notes that is or are to be issued by the Borrower and offered to FFB for purchase (such note or notes being the "Note" or "Notes," as the case may be):

(d) the aggregate maximum principal amount of the loan to be committed to the Borrower (which amount is also to be the aggregate maximum principal amount of the Note or Notes that is or are to be issued by the Borrower and offered to FFB for purchase) as follows:

Aggregate maximum principal amount of the loan:

_____.

Maximum principal amount of [the Note] [Note A]:

_____.

[Maximum principal amount of Note B]:

[_____.]

[Maximum principal amount of Note C]:

[_____.]

(e) the state of incorporation of the Borrower is as follows:

_____.

(f) the titles of all security instruments securing the loan to be made to the Borrower is as follows:

_____.

(g) the last day on which an Advance may be made under [the Note] [each Note] is as follows:

[for the Note] [for Note A]

_____.

[for Note B]

[_____.

[for Note C]

[_____.

(h) the date on which [the] [each] Note and all Advances made [thereunder] [under each Note] are to mature (such date being the "Maturity Date") is as follows:

[for the Note] [for Note A]

_____.

[for Note B]

[_____.

[for Note C]

[_____.

(i) interest accrued on the outstanding principal balance of each Advance shall be due and payable on a ***[select one]*** [semi-annual] / [quarterly] basis;

[if "semi-annual" is selected, use and fill-in the following paragraph]

the particular semi-annual dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other must be the particular calendar date in each year that is six months from such date (each of such dates being a "Payment Date"), are as follows:

_____ __ and _____ __ of each year.

[if "quarterly" is selected, use and fill-in the following paragraph]

the particular quarterly dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other three of which must be the particular calendar dates in each year that are at three-month intervals from such date (each of such dates being a "Payment Date"), are as follows:

_____ __ , _____ __ ,

_____ __ and _____ __ of each year.

(j) the date on which the first installment of principal is to be payable on such Note, which must be a Payment Date, is as follows:

_____.

The undersigned certifies that the undersigned has been authorized to execute this Designation Notice on behalf of the Secretary and to deliver it to FFB and the Borrower, and that this authority is valid and in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Designation Notice and caused it to be delivered to FFB and the Borrower.

SECRETARY OF ENERGY
acting through his or her
duly authorized designate

Signature: _____

Print Name: _____

Title: _____

Date: _____

NOTE PURCHASE AGREEMENT made as of _____, by and among the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, _____ (the "Borrower"), a corporation organized and existing under the laws of the State of _____, and the **SECRETARY OF ENERGY** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Program Authority (as hereinafter defined), to carry out a program to provide for loans that meet the requirements of the Program Authority; and

WHEREAS, FFB is authorized, pursuant to the Program Authority, to make loans under the Secretary's program; and

WHEREAS, FFB has entered into the Program Financing Agreement (as hereinafter defined) with the Secretary setting forth the commitment of FFB to enter into agreements to purchase notes issued by entities designated by the Secretary when the Secretary affirms that (i) the Secretary is obligated to reimburse FFB under circumstances and in amounts as provided therein in connection with loans evidenced by those notes, and (ii) such reimbursement obligations are made with the full faith and credit of the United States, and the commitment of the Secretary to make such affirmations; and

WHEREAS, pursuant to the Program Financing Agreement, the Secretary has delivered to FFB and the Borrower a Designation Notice (as hereinafter defined) designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement; and

WHEREAS, FFB is entering into this Note Purchase Agreement, in fulfillment of its commitment under the Program Financing

Agreement, setting out, among other things, FFB's agreement to purchase the Note[s] (as hereinafter defined) to be issued by the Borrower, when the terms and conditions specified herein have been satisfied, as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FFB, the Secretary, and the Borrower agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

As used in this Agreement, the following terms shall have the respective meanings specified in this section 1.1, unless the context clearly requires otherwise.

"Advance" shall mean an advance of funds made by FFB under [the] [any] Note in accordance with the provisions of article 7 of this Agreement.

"Advance Identifier" shall mean, for each Advance, the particular sequence of letters and numbers constituting the Note Identifier plus the particular sequence of additional numbers assigned by FFB to the respective Advance in the interest rate confirmation notice relating to such Advance delivered by FFB in accordance with section 7.7 of this Agreement.

"Advance Request" shall mean a letter from the Borrower requesting an Advance under [the] [any] Note, in the form of letter attached as Exhibit A to this Agreement.

"Advance Request Approval Notice" shall mean the written notice from the Department located at the end of an Advance Request advising FFB that such Advance Request has been approved by or on behalf of the Secretary.

"Borrower Instruments" shall have the meaning specified in section 3.2.1 of this Agreement.

"Business Day" shall mean any day on which FFB and the Federal Reserve Bank of New York are both open for business.

"Certificate Specifying Authorized Borrower Officials" shall mean a certificate of the Borrower specifying the names and titles of those officials of the Borrower who are authorized to execute and deliver from time to time Advance Requests on behalf of the Borrower, and containing the original signature of each of those officials, substantially in the form of the Certificate Specifying Authorized Borrower Officials attached as Exhibit B to this Agreement.

"Certificate Specifying Authorized Department Officials" shall mean a certificate specifying the names and titles of those officials of the Department who are authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the original signature of each of those authorized officials, and specifying the name and title of those officials of the Department who are authorized to confirm telephonically the authenticity of the Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the telephone number of each of those authorized officials, in the form of the Certificate Specifying Authorized Department Officials attached as Annex 1 to the Program Financing Agreement.

"Department" shall mean the Department of Energy.

"Designation Notice" shall mean, generally, a notice from the Secretary to FFB and the particular entity identified therein as the respective "Borrower," designating that entity to be a "Borrower" for purposes of the Program Financing Agreement, in the form of notice that is attached as Annex 2 to the Program Financing Agreement; and "*the* Designation Notice" shall mean the particular Designation Notice delivered by the Secretary to FFB and the Borrower designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement.

"Governmental Approval" shall mean any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Authority" shall mean any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial, regulatory, or administrative function of government.

"Governmental Judgment" shall mean any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Registration" shall mean any registration, filing, declaration, or notice, or any other action of a similar nature, with or to a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Rule" shall mean any statute, law, rule, regulation, code, or ordinance of a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Holder" shall mean, with respect to [the] [any] Note, FFB, for so long as it shall be the holder of [the] [such] Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of [the] [such] Note.

"Loan Commitment Amount" shall mean _____.

"Material Adverse Effect on the Borrower" shall mean any material adverse effect on the financial condition, operations, business or prospects of the Borrower [or any affiliated guarantor of the Borrower] or the ability of the Borrower to perform its obligations under this Agreement or any of the other Borrower Instruments.

"Note" shall mean [the] [any] future advance promissory note issued by the Borrower payable to FFB, in the form of note that is attached as Exhibit C to this Agreement, as [any] such Note may be amended, supplemented, and restated from time to time in accordance with its terms.

"Note Identifier" shall mean[, with respect to each Note,] the particular sequence of letters and numbers assigned by FFB to [the] [the respective] Note in the Principal Instruments acceptance notice relating to [the] [such] Note delivered by FFB in accordance with section 5.1 of this Agreement.

"Opinion of Borrower's Counsel re: Borrower Instruments" shall mean an opinion of counsel from counsel to the Borrower, substantially in the form of opinion that is attached as Exhibit D to this Agreement.

"Opinion of Secretary's Counsel re: Secretary's Affirmation" shall mean an opinion of counsel from counsel to the Secretary, substantially in the form of opinion that is attached as Exhibit E to this Agreement.

"Other Debt Obligation" shall mean any note or any other evidence of an obligation for borrowed money of a similar nature, made or issued by the Borrower (other than the Note[s] purchased by FFB under this Agreement), or any mortgage, indenture, deed of trust or loan agreement with respect thereto to which the Borrower is a party or by which the Borrower or any of its properties is bound (other than this Agreement).

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, trust company, unincorporated organization or Governmental Authority.

"Principal Instruments" shall have the meaning specified in section 4.2 of this Agreement.

"Program Authority" shall mean section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended from time to time, including as amended by section 129 of Division A of

the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578).

"Program Financing Commitment Amount" shall have the meaning specified in section 1.1 of the Program Financing Agreement.

"Program Financing Agreement" shall mean the Program Financing Agreement dated as of September __, 2009, between FFB and the Secretary, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Requested Advance Amount" shall have the meaning specified in section 7.3.1(a)(2) of this Agreement.

"Requested Advance Date" shall have the meaning specified in section 7.3.1(a)(3) of this Agreement.

"Secretary's Affirmation" shall mean the affirmation of the Note issued by the Secretary, in the form of affirmation that is attached as Exhibit F to this Agreement.

"Secretary's Certificate" shall mean the certificate relating to the Secretary's Affirmation and other matters, in the form of certificate that is attached as Exhibit G to this Agreement.

"Secretary's Instruments" shall have the meaning specified in section 3.3.1 this Agreement.

"this Agreement" shall mean this Note Purchase Agreement among FFB, the Secretary, and the Borrower.

"Uncontrollable Cause" shall mean an unforeseeable cause beyond the control and without the fault of FFB, being: act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, disruption or failure of the Treasury Financial Communications System, closure of the Federal Government, or

an unforeseen or unscheduled closure or evacuation of the FFB offices.

Section 1.2 Rules of Interpretation.

Unless the context shall otherwise indicate, the terms defined in section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural. The words "herein," "hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE 2

FFB COMMITMENT TO PURCHASE THE NOTE

Subject to the terms and conditions of this Agreement, FFB agrees to purchase the Note[s] that [is] [are] offered by the Borrower to FFB for purchase under this Agreement.

ARTICLE 3

COMMITMENT CONDITIONS

FFB shall be under no obligation to purchase the Note[s] under this Agreement unless and until each of the conditions specified in this article 3 has been satisfied.

Section 3.1 Commitment Amount Limits.

3.1.1 Loan Commitment Amount. The [aggregate] maximum principal amount of the Note[s] that [is] [are] offered for purchase shall not exceed the Loan Commitment Amount.

3.1.2 Program Financing Commitment Amount. At the time that [the] [each] Note is offered to FFB for purchase under this Agreement, the [aggregate] maximum principal amount of the Note[s], when added to the aggregate maximum principal amount of all other notes that have been issued by entities that have been designated by the Secretary in Designation Notices to be "Borrowers" for purposes of the

Program Financing Agreement and in connection with which the Secretary has undertaken certain reimbursement obligations pursuant to the Program Authority, shall not exceed the Program Financing Commitment Amount.

Section 3.2 Borrower Instruments.

3.2.1 Borrower Instruments. FFB shall have received from the Borrower the following instruments (such instruments being, collectively, the "Borrower Instruments"):

(a) an original counterpart of this Agreement, duly executed by the Borrower; and

(b) [the] [each] original Note described in the Designation Notice, with all of the blanks on page 1 of [the] [each] Note filled in with information consistent with the information set out in the Designation Notice, and duly executed by the Borrower.

3.2.2 Opinion of Borrower's Counsel re: Borrower Instruments. FFB shall have received from the Borrower an Opinion of Borrower's Counsel re: Borrower Instruments.

3.2.3 Certificate Specifying Authorized Borrower Officials. FFB shall have received from the Borrower a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 3.3 Secretary's Instruments.

3.3.1 Secretary's Instruments. FFB shall have received from the Secretary the following instruments (such instruments being, collectively, the "Secretary's Instruments"):

(a) an original counterpart of this Agreement, duly executed by or on behalf of the Secretary;

(b) the original Secretary's Affirmation relating to the Note[s], duly executed by or on behalf of the Secretary; and

(c) an original Secretary's Certificate relating to the Secretary's Affirmation and other matters, duly executed by or on behalf of the Secretary.

3.3.2 Opinion of Secretary's Counsel re: Secretary's Affirmation. FFB shall have received an Opinion of Secretary's Counsel re: Secretary's Affirmation.

Section 3.4 Conditions Specified in Other Agreements.

Each of the conditions specified in the Program Financing Agreement as being conditions to purchasing the Note shall have been satisfied, or waived by both FFB and the Secretary.

ARTICLE 4

OFFER OF THE NOTE[S] FOR PURCHASE

The Note[s] that [is] [are] to be offered to FFB for purchase under this Agreement shall be offered in accordance with the procedures described in this article 4.

Section 4.1 Delivery of Borrower Instruments to the Secretary.

The Borrower shall deliver to the Secretary, for redelivery to FFB, the following:

(a) all of the Borrower Instruments, each duly executed by the Borrower;

(b) an Opinion of Borrower's Counsel re: Borrower Instruments; and

(c) a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 4.2 Delivery of Principal Instruments by the Secretary to FFB.

The Secretary shall deliver to FFB all of the following instruments (collectively being the "Principal Instruments"):

(a) all of the instruments described in section 4.1;

(b) all of the Secretary's Instruments, each duly executed by the Secretary; and

(c) an Opinion of Secretary's Counsel re: Secretary's Affirmation.

ARTICLE 5

PURCHASE OF THE NOTE[S] BY FFB

Section 5.1 Acceptance or Rejection of Principal Instruments.

Within 5 Business Days after delivery to FFB of the Principal Instruments relating to the Note[s] that [is][are] offered for purchase under this Agreement, FFB shall deliver by facsimile transmission (fax) to the Department one of the following:

(a) an acceptance notice, which notice shall:

(1) state that the Principal Instruments meet the terms and conditions detailed in article 3 of this Agreement, or are otherwise acceptable to FFB; and

(2) assign a Note Identifier to [such][each] Note for use by the Borrower and the Department in all communications to FFB making reference to [such][the respective] Note; or

(b) a rejection notice, which notice shall state that one or more of the Principal Instruments does not meet the terms and conditions of this Agreement and specify how such instrument or instruments does not meet the terms and conditions of this Agreement.

Section 5.2 Purchase.

FFB shall not be deemed to have accepted the Note[s] offered for purchase under this Agreement until such time as FFB shall have delivered an acceptance notice accepting the Principal Instruments relating to the Note[s]; provided, however, that in the event that FFB shall make an Advance under [the] [any] Note, then FFB shall be deemed to have accepted [the] [such] Note offered for purchase.

ARTICLE 6

CUSTODY OF NOTE; LOSS OF NOTE, ETC.

Section 6.1 Custody.

FFB shall have custody of [the] [each] Note purchased under this Agreement until all amounts owed under the [respective] Note have been paid in full.

Section 6.2 Lost, Stolen, Destroyed, or Mutilated Note.

In the event that [the] [any] Note purchased under this Agreement shall become lost, stolen, destroyed, or mutilated, the Borrower shall, upon the written request of FFB, execute and deliver, in replacement thereof, a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed, or mutilated Note or, if no interest has been paid thereon, dated the same date as such lost, stolen, destroyed, or mutilated Note. Upon delivery of such replacement Note, the Borrower shall be released and discharged from any further liability on account of the lost, stolen, or destroyed Note. If the Note being replaced has been mutilated, such mutilated Note shall be surrendered to the Borrower for cancellation.

ARTICLE 7

ADVANCES

Section 7.1 Commitment.

Subject to the terms and conditions of this Agreement, FFB agrees to make Advances under [the] [each] Note for the account of the Borrower.

Section 7.2 Treasury Policies Applicable to Advances.

Each of the Borrower and the Secretary understands and consents to the following Treasury financial management policies generally applicable to all advances of funds:

(a) each Advance will be requested by the Borrower, and each Advance Request will be approved by the Secretary, only at such time and in such amount as shall be necessary to meet the immediate payment or disbursing need of the Borrower;

(b) except for Advances to reimburse the Borrower for expenditures that it has made from its own working capital, each Advance will be requested to be disbursed directly to the Person(s) to whom the Borrower is obligated to make payments;

(c) Advances for investment purposes will not be requested by the Borrower or approved by the Secretary; and

(d) all interest earned on any lawful and permitted investment of Advances in excess of the interest accrued on such Advances will be remitted to FFB.

Section 7.3 Conditions to Making Advances.

FFB shall be under no obligation to make any Advance under [the] [any] Note unless and until each of the conditions specified in this section 7.3 is satisfied.

7.3.1 Advance Requests. For each Advance under [the] [any] Note, the Borrower shall have delivered to the

Secretary, for review and approval before being forwarded to FFB, an Advance Request, which Advance Request:

(a) shall specify, among other things:

(1) the particular "Note Identifier" that FFB assigned to the [respective] Note (as provided in section 5.1 of this Agreement;

(2) the particular amount of funds that the Borrower requests to be advanced (such amount being the "Requested Advance Amount" for the respective Advance);

(3) the particular calendar date that the Borrower requests to be the date on which the respective Advance is to be made (such date being the "Requested Advance Date" for such Advance), which date:

(A) must be a Business Day; and

(B) shall not be earlier than the third Business Day to occur after the date on which FFB shall have received the respective Advance Request; and

(4) the particular bank account to which the Borrower requests that the respective Advance be made;

(b) shall have been duly executed by an official of the Borrower whose name and signature appear on the Certificate Specifying Authorized Borrower Officials delivered by the Borrower to FFB pursuant to section 3.2.3 of this Agreement; and

(c) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.2 Advance Request Approval Notice. For each Advance, the Secretary shall have delivered to FFB the Borrower's executed Advance Request, together with the

Department's executed Advance Request Approval Notice, which Advance Request Approval Notice:

(a) shall have been duly executed on behalf of the Secretary by an official of the Department whose name and signature appear on the Certificate Specifying Authorized Department Officials delivered to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and

(b) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.3 Telephonic Confirmation of Authenticity of Advance Request Approval Notices. For each Advance, FFB shall have obtained telephonic confirmation of the authenticity of the related Advance Request Approval Notice from an official of the Department (a) whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and (b) who is not the same official of the Department who executed the Advance Request Approval Notice on behalf of the Secretary.

7.3.4 Note Maximum Principal Amount Limit. At the time of making any Advance under [the] [any] Note, the amount of such Advance, when added to the aggregate amount of all Advances previously made under [the] [such] Note, shall not exceed the maximum principal amount of [the] [such] Note.

7.3.5 Conditions Specified in Other Agreements. Each of the conditions specified in the Program Financing Agreement as being conditions to making Advances under [the] [each] Note, shall have been satisfied, or waived by both FFB and the Secretary.

Section 7.4 Amount and Timing of Advances.

FFB shall make each Advance in the Requested Advance Amount specified in the respective Advance Request and on the Requested Advance Date specified in the respective Advance Request, subject to satisfaction of the conditions specified in section 7.3 of

this Agreement and subject to the following additional limitations:

(a) in the event that the Requested Advance Date specified in the respective Advance Request is not a Business Day, FFB shall make the respective Advance on the first day thereafter that is a Business Day;

(b) in the event that FFB receives the respective Advance Request and the related Advance Request Approval Notice later than the third Business Day before the Requested Advance Date specified in such Advance Request, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the third Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date;

(c) in the event that an Uncontrollable Cause prevents FFB from making the respective Advance on the Requested Advance Date specified in the respective Advance Request, FFB shall make such Advance as soon as such Uncontrollable Cause ceases to prevent FFB from making such Advance, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date; and

(d) in the event that FFB receives, not later than 3:30 p.m. (Washington, DC, time) on the Business Day immediately before the Requested Advance Date specified in an Advance Request, a written notice delivered by facsimile transmission of withdrawal or cancellation of the Advance Request Approval Notice, and telephonic confirmation of the withdrawal or cancellation, from an official of the Department whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement, FFB shall not make the respective Advance.

Section 7.5 Type of Funds and Means of Advance.

Each Advance shall be made in immediately available funds by electronic funds transfer to such bank account(s) as shall have been specified in the respective Advance Request.

Section 7.6 Interest Rate Applicable to Advances.

The rate of interest applicable to each Advance made under [the] [any] Note shall be established as provided in paragraph 6 of [the] [such] Note.

Section 7.7 Interest Rate Confirmation Notices.

After making each Advance, FFB shall deliver, by facsimile transmission, to the Borrower and the Department written confirmation of the making of the respective Advance, which confirmation shall:

(a) state the date on which such Advance was made;

(b) state the interest rate applicable to such Advance; and

(c) assign an Advance Identifier to such Advance for use by the Borrower and the Department in all communications to FFB making reference to such Advance.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES BY THE BORROWER

The Borrower makes the representations and warranties provided in this article 8 to FFB.

Section 8.1 Organization.

The Borrower is a corporation duly organized, validly existing and in good standing under the laws of _____ and is qualified to do business in the [state(s) of the project(s)].

Section 8.2 Authority.

The Borrower has all requisite corporate power and authority to carry on its business as presently conducted, to execute and deliver this Agreement and each of the other Borrower Instruments, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder.

Section 8.3 Due Authorization.

The execution and delivery by the Borrower of this Agreement and each of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby and thereby, and the performance by the Borrower of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action.

Section 8.4 Due Execution.

This Agreement has been, and each of the other Borrower Instruments will have been at the respective time of delivery of each thereof, duly executed and delivered by officials of the Borrower who are duly authorized to execute and deliver such documents on its behalf.

Section 8.5 Validity and Enforceability.

This Agreement constitutes, and each of the other Borrower Instruments will constitute at the respective time of delivery of each thereof, the legal, valid, and binding agreement of the Borrower, enforceable against the Borrower in accordance with their respective terms.

Section 8.6 No Governmental Actions Required.

No Governmental Approvals or Governmental Registrations are now, or under existing Governmental Rules will in the future be, required to be obtained or made, as the case may be, by the Borrower to authorize the execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated

hereby or thereby, or the performance by the Borrower of its obligations hereunder or thereunder.

Section 8.7 No Conflicts or Violations.

The execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, and the performance by the Borrower of its obligations hereunder or thereunder do not and will not conflict with or violate, result in a breach of, or constitute a default under (a) any term or provision of the charter documents or bylaws of the Borrower; (b) any of the covenants, conditions or agreements contained in any Other Debt Obligation of the Borrower; (c) any Governmental Approval or Governmental Registration obtained or made, as the case may be, by the Borrower; or (d) any Governmental Judgment or Governmental Rule currently applicable to the Borrower.

Section 8.8 All Necessary Governmental Actions.

The Borrower has not failed to obtain any material Governmental Approval or make any material Governmental Registration required or necessary to carry on the business of the Borrower as presently conducted, and the Borrower reasonably believes that it will not be prevented by any Governmental Authority having jurisdiction over the Borrower from so carrying on its business as presently conducted.

Section 8.9 No Material Litigation.

There are no lawsuits or judicial or administrative actions, proceedings or investigations pending or, to the best knowledge of the Borrower, threatened against the Borrower which, in the reasonable opinion of the Borrower, is likely to have a Material Adverse Effect on the Borrower.

ARTICLE 9

BILLING BY FFB

Section 9.1 Billing Statements to the Borrower and the Department.

FFB shall prepare a billing statement for the amounts owed to FFB on each Advance that is made under [the] [each] Note purchased under this Agreement, and shall deliver each such billing statement to the Borrower and the Department.

Section 9.2 Failure to Deliver or Receive Billing Statements No Release.

Failure on the part of FFB to deliver any billing statement or failure on the part of the Borrower to receive any billing statement shall not, however, relieve the Borrower of any of its payment obligations under the Note or this Agreement.

Section 9.3 FFB Billing Determinations Conclusive.

9.3.1 Acknowledgment and Consent. The Borrower acknowledges that FFB has described to it:

(a) the rounding methodology employed by FFB in calculating the amount of accrued interest owed at any time on [the] [each] Note; and

(b) the methodology employed by FFB in calculating the equal principal installments payment schedule for amounts due and payable on [the] [each] Note;

and the Borrower consents to these methodologies.

9.3.2 Agreement. The Borrower agrees that any and all determinations made by FFB shall, absent manifest error, be conclusive and binding upon the Borrower with respect to:

(a) the amount of accrued interest owed on [the] [each] Note determined using this rounding methodology; and

(b) the amount of any equal principal installments payment due and payable on [the] [each] Note determined using this methodology.

ARTICLE 10

PAYMENTS TO FFB

Each amount that becomes due and owing on [the] [each] Note purchased under this Agreement shall be paid when and as due, as provided in the [respective] Note.

ARTICLE 11

SECRETARY'S RIGHT TO PURCHASE ADVANCES OR [THE] [ANY] NOTE

Notwithstanding the provisions of [each of] the Note[s], the Borrower acknowledges that, under the terms of the Program Financing Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under [the] [any] Note, or may purchase from FFB [the] [any] Note in its entirety, in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the terms of [the] [such] Note, to a prepayment by the Borrower of all or any portion of any Advance made under [the] [such] Note, or a prepayment by the Borrower of [the] [such] Note in its entirety, as the case may be.

ARTICLE 12

EFFECTIVE DATE, TERM, SURVIVAL

Section 12.1 Effective Date.

This Agreement shall be effective as of the date first above written.

Section 12.2 Term of Commitment to Make Advances.

The obligation of FFB under this Agreement to make Advances under [the] [each] Note issued by the Borrower shall expire on the "Last Day for an Advance" specified in the [respective] Note.

Section 12.3 Survival.

12.3.1 Representations, Warranties, and Certifications. All representations, warranties, and certifications made by the Borrower in this Agreement, or in any agreement, instrument, or certificate delivered pursuant hereto, shall survive the execution and delivery of this Agreement, the purchasing of the Note[s] hereunder, and the making of Advances thereunder.

12.3.2 Remainder of Agreement. Notwithstanding the occurrence and passage of the Last Day for an Advance, the remainder of this Agreement shall remain in full force and effect until all amounts owed under this Agreement and [each of] the Note[s] purchased by FFB under this Agreement have been paid in full.

ARTICLE 13

MISCELLANEOUS

Section 13.1 Notices.

13.1.1 Addresses of the Parties. All notices and other communications hereunder or under [the] [any] Note to be made to any party shall be in writing and shall be addressed as follows:

To FFB:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Telephone No. (202) 622-2470
Facsimile No. (202) 622-0707

To the Borrower:

_____
_____
_____
_____

Attention: _____
_____

Telephone: (___) ___-____
Facsimile: (___) ___-____

To the Secretary (or the Department):

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Telephone No. (202) 586-8146
Facsimile No. (202) 586-7809

Copies of all legal notices and correspondence should also be sent to:

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone No. (202) 586-5281
Facsimile No. (202) 586-1499

The address, telephone number, or facsimile number for any party may be changed at any time and from time to time upon

written notice given by such changing party to each of the other parties hereto.

13.1.2 Permitted Means of Delivery. Advance Requests, notices, and other communications to FFB may be delivered by facsimile (fax) transmission of the executed instrument.

13.1.3 Effective Date of Delivery. A properly addressed notice or other communication shall be deemed to have been "delivered" for purposes of this Agreement:

(a) if made by personal delivery, on the date of such personal delivery;

(b) if mailed by first class mail, registered or certified mail, express mail, or by any commercial overnight courier service, on the date that such mailing is received;

(c) if sent by facsimile (fax) transmission:

(1) if the transmission is received and receipt confirmed before 4:00 p.m. (Washington, DC, time) on any Business Day, on the date of such transmission; and

(2) if the transmission is received and receipt confirmed after 4:00 p.m. (Washington, DC, time) on any Business Day or any day that is not a Business Day, on the next Business Day.

13.1.4 Notices to FFB to Contain FFB Identification References. All notices to FFB making any reference to [the] [any] Note or any Advance made [thereunder] [under such Note] shall identify the [respective] Note or such Advance by the [respective] Note Identifier or the respective Advance Identifier, as the case may be, assigned by FFB to [the] [such] Note or such Advance.

Section 13.2 Amendments.

No provision of this Agreement may be amended, modified, supplemented, waived, discharged, or terminated orally but only by an instrument in writing duly executed by each of the parties hereto and consented to in writing by or on behalf of the Secretary.

Section 13.3 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of each of FFB, the Borrower, and the Secretary, and each of their respective successors and assigns.

Section 13.4 Sale or Assignment of Note.

13.4.1 Sale or Assignment Permitted. FFB may sell, assign, or otherwise transfer all or any part of [the] [any] Note or any participation share thereof; provided, however, that, notwithstanding the foregoing, following any such sale, assignment or transfer, FFB shall continue to be fully liable for its duties and obligations hereunder and under such Note.

13.4.2 Notice of Sale, Etc.

(a) Sale, Etc., to a Federal Entity. In the case of any sale, assignment, or other transfer by FFB of all or any part of [the] [any] Note or any participation share thereof to an agency or instrumentality of the United States or a trust fund or other government account under the authority or control of the United States or any officer or officers thereof, FFB will deliver to the Borrower and the Department written notice of such sale, assignment, or other transfer promptly after such sale, assignment, or other transfer.

(b) Sale, Etc., to Other Than a Federal Entity. In the case of any sale, assignment, or other transfer by FFB of all or any part of [the] [any] Note or any participation share thereof to a purchaser, assignee, or transferee that is not an agency or instrumentality of the United States or a trust fund or other

government account under the authority or control of the United States or any officer or officers thereof, FFB will deliver to the Borrower and the Department written notice of such sale, assignment, or other transfer at least [ ] calendar days in advance of such sale, assignment, or other transfer.

13.4.3 Manner of Payment after Sale. Any sale, assignment, or other transfer of all or any part of any Note may provide that, following such sale, assignment, or other transfer, payments on such Note shall be made in the manner specified by the respective purchaser, assignee, or transferee, as the case may be.

13.4.4 Replacement Notes. The Borrower agrees:

(a) to issue a replacement Note or Notes with the same aggregate principal amount, interest rate, maturity, and other terms as each respective Note or Notes sold, assigned, or transferred pursuant to section 13.4.1 of this Agreement; provided, however, that, when requested by the respective purchaser, assignee, or transferee, such replacement Note or Notes shall provide that payments thereunder shall be made in the manner specified by such purchaser, assignee, or transferee; and

(b) to effect the change in ownership on its records and on the face of each such replacement Note issued, upon receipt of each Note or Notes so sold, assigned, or transferred.

Section 13.5 Forbearance Not a Waiver.

Any forbearance on the part of FFB from enforcing any term or condition of this Agreement shall not be construed to be a waiver of such term or condition or acquiescence by FFB in any failure on the part of Borrower to comply with or satisfy such term or condition.

Section 13.6 Rights Confined to Parties.

Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give to, any Person other than

FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements contained herein shall be for the sole and exclusive benefit of FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns.

Section 13.7 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

Section 13.8 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 13.9 Headings.

The descriptive headings of the various articles, sections, and subsections of this Agreement were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 13.10 Counterparts.

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, FFB, the Borrower, and the Secretary have each caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: _____

Name: _____

Title: Vice President

_____
(the "Borrower")

By: _____

Name: _____

Title: _____

THE SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized designate

By: _____

Name: _____

Title: _____

Department of Energy
Washington, DC 20585

September 16, 2009

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20585

Program Financing Agreement and Secretary's Affirmation
ATVM Program

Ladies and Gentlemen:

As the Deputy General Counsel of the United States Department of Energy (the "*Department*"), I am familiar with (*i*) the Program Financing Agreement dated as of September 16, 2009 (the "*Program Financing Agreement*") between the Federal Financing Bank ("*FFB*") and the Secretary of Energy (the "*Secretary*") and the transactions contemplated thereby and (*ii*) the Secretary's Affirmation dated as of September 16, 2009 (the "*Secretary's Affirmation*") issued by the Secretary relating to: (*x*) Future Advance Promissory Note A dated September 16, 2009, issued by Ford Motor Company (the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, to FFB in the maximum principal amount of $4,377,000,000; and (*y*) Future Advance Promissory Note B dated as of September 16, 2009, issued by the Borrower to FFB in the maximum principal amount of $1,560,000,000 (together, the "*Notes*"). Capitalized terms not defined herein have the meanings assigned to them in the Program Financing Agreement.

For the purposes of rendering this opinion, I (or members of my staff) have reviewed: (*i*) section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended, including without limitation as amended by section 129(c) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578) ("*Section 136*") and the regulations promulgated thereunder, (*ii*) an executed original counterpart of the Program Financing Agreement, (*iii*) the executed original of the Secretary's Affirmation and (*iv*) the originals, or copies certified or otherwise identified to our satisfaction, of such other agreements, instruments, certificates, records, and other documents as in my judgment are necessary or appropriate to enable me to render the opinion expressed below.

This opinion is delivered to you pursuant to: (*i*) section 3.1.2 of the Program Financing Agreement; and (*ii*) section 3.3.2 of the Note Purchase Agreement dated as of September 16, 2009 (the "*Note Purchase Agreement*") by and among FFB, the Borrower and the Secretary.

Based on the foregoing and upon such further investigation as I have deemed necessary, I am of the opinion that:

1. The execution and delivery of the Program Financing Agreement on behalf of the Secretary, the consummation by the Department of the transactions contemplated thereby, and the performance by the Department of the Secretary's obligations thereunder are authorized by applicable law.

2. The execution and delivery of the Secretary's Affirmation on behalf of the Secretary, the consummation by the Department of the transactions contemplated thereby, and the performance by the Department of the Secretary's obligations thereunder are authorized by applicable law.

3. The Program Financing Agreement has been executed and delivered by an official of the Department who is duly authorized to execute and deliver such document on behalf of the Secretary.

4. The Secretary's Affirmation has been executed and delivered by an official of the Department who is duly authorized to execute and deliver such document on behalf of the Secretary.

5. As provided explicitly in paragraph (d)(1) of Section 136, loans made through FFB in accordance therewith shall have the full faith and credit of the United States Government on the principal and interest.

Sincerely,

Eric J. Fygi
Deputy General Counsel

Department of Energy
Washington, DC 20585

September 16, 2009

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20585

Program Financing Agreement and Secretary's Affirmation
ATVM Program

Ladies and Gentlemen:

As the Deputy General Counsel of the United States Department of Energy (the "*Department*"), I am familiar with (*i*) the Program Financing Agreement dated as of September 16, 2009 (the "*Program Financing Agreement*") between the Federal Financing Bank ("*FFB*") and the Secretary of Energy (the "*Secretary*") and the transactions contemplated thereby and (*ii*) the Secretary's Affirmation dated as of September 16, 2009 (the "*Secretary's Affirmation*") issued by the Secretary relating to: (*x*) Future Advance Promissory Note A dated September 16, 2009, issued by Ford Motor Company (the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, to FFB in the maximum principal amount of $4,377,000,000; and (*y*) Future Advance Promissory Note B dated as of September 16, 2009, issued by the Borrower to FFB in the maximum principal amount of $1,560,000,000 (together, the "*Notes*"). Capitalized terms not defined herein have the meanings assigned to them in the Program Financing Agreement.

For the purposes of rendering this opinion, I (or members of my staff) have reviewed: (*i*) section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended, including without limitation as amended by section 129(c) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578) ("*Section 136*") and the regulations promulgated thereunder, (*ii*) an executed original counterpart of the Program Financing Agreement, (*iii*) the executed original of the Secretary's Affirmation and (*iv*) the originals, or copies certified or otherwise identified to our satisfaction, of such other agreements, instruments, certificates, records, and other documents as in my judgment are necessary or appropriate to enable me to render the opinion expressed below.

This opinion is delivered to you pursuant to: (*i*) section 3.1.2 of the Program Financing Agreement; and (*ii*) section 3.3.2 of the Note Purchase Agreement dated as of September 16, 2009 (the "*Note Purchase Agreement*") by and among FFB, the Borrower and the Secretary.

Based on the foregoing and upon such further investigation as I have deemed necessary, I am of the opinion that:

1. The execution and delivery of the Program Financing Agreement on behalf of the Secretary, the consummation by the Department of the transactions contemplated thereby, and the performance by the Department of the Secretary's obligations thereunder are authorized by applicable law.

2. The execution and delivery of the Secretary's Affirmation on behalf of the Secretary, the consummation by the Department of the transactions contemplated thereby, and the performance by the Department of the Secretary's obligations thereunder are authorized by applicable law.

3. The Program Financing Agreement has been executed and delivered by an official of the Department who is duly authorized to execute and deliver such document on behalf of the Secretary.

4. The Secretary's Affirmation has been executed and delivered by an official of the Department who is duly authorized to execute and deliver such document on behalf of the Secretary.

5. As provided explicitly in paragraph (d)(1) of Section 136, loans made through FFB in accordance therewith shall have the full faith and credit of the United States Government on the principal and interest.

Sincerely,

Eric J. Fygi
Deputy General Counsel

DOE (ATV)

CERTIFICATE SPECIFYING
AUTHORIZED DEPARTMENT OFFICIALS

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Reference is made to the Program Financing Agreement dated as of September 16, 2009, between the Federal Financing Bank ("FFB") and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Program Financing Agreement.

This Certificate Specifying Authorized Department Officials is delivered to FFB pursuant to section 3.1.3 of the Program Financing Agreement.

1. The undersigned, on behalf of the Secretary, hereby certifies that:

a. each of the individuals named below is the duly qualified and incumbent official of Department of Energy holding the position title set out opposite the respective individual's name;

b. each of the individuals named below is authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary; and

c. the signature of each such individual set out opposite the respective individual's name and title is the genuine signature of such individual:

Name	Title	Signature
Owen Barwell	Deputy Chief Financial Officer	
Lachlan W. Seward	Director, Advanced Technology Vehicles Manufacturing Loan Program	
William Clay Sumner	Senior Investment Officer	

2. The undersigned, on behalf of the Secretary, hereby certifies that:

a. each of the individuals named below is the duly qualified and incumbent official of the Department of Energy holding the position title set out opposite the respective individual's name;

b. each of the individuals named below is authorized to confirm telephonically the authenticity of Advance Request Approval Notices from time to time on behalf of the Secretary; and

c. the telephone number of each such individual is set out opposite the respective individual's name and title:

Name	Title	Telephone Number
Michael A. Mates	Financial Operations Officer, Advanced Technology Vehicles Manufacturing Loan Program	(202) 586-1565
Robert H. Edwards, Jr.	Deputy General Counsel for Energy Policy	(202) 586-6758
Daniel Cohen	Assistant General Counsel for Legislation and Regulatory Law	(202) 586-9523

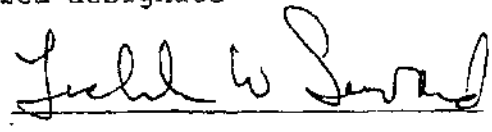
DOE (ATV)

Jason Gerbsman	Senior Investment Officer	(202) 586-4043

The undersigned certifies that the undersigned has been authorized to execute this Certificate Specifying Authorized Department Officials on behalf of the Secretary and to deliver it to FFB, and that this authority is valid and in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate Specifying Authorized Department Officials and caused it to be delivered to FFB.

SECRETARY OF ENERGY
acting through his
duly authorized designate

Signature: 

Print Name: Lachlan W. Seward

Title: Director, Advanced Technology Vehicles Manufacturing Loan Program

Date: 9/16/09

NOTE PURCHASE AGREEMENT made as of January 20, 2010, by and among the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, **TESLA MOTORS, INC.** (the "Borrower"), a corporation organized and existing under the laws of the State of Delaware, and the **SECRETARY OF ENERGY** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Program Authority (as hereinafter defined), to carry out a program to provide for loans that meet the requirements of the Program Authority; and

WHEREAS, FFB is authorized, pursuant to the Program Authority, to make loans under the Secretary's program; and

WHEREAS, FFB has entered into the Program Financing Agreement (as hereinafter defined) with the Secretary setting forth the commitment of FFB to enter into agreements to purchase notes issued by entities designated by the Secretary when the Secretary affirms that (i) the Secretary is obligated to reimburse FFB under circumstances and in amounts as provided therein in connection with loans evidenced by those notes, and (ii) such reimbursement obligations are made with the full faith and credit of the United States, and the commitment of the Secretary to make such affirmations; and

WHEREAS, pursuant to the Program Financing Agreement, the Secretary has delivered to FFB and the Borrower a Designation Notice (as hereinafter defined) designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement; and

WHEREAS, FFB is entering into this Note Purchase Agreement, in fulfillment of its commitment under the Program Financing Agreement, setting out, among other things, FFB's agreement to purchase the Notes (as hereinafter defined) to be issued by the

Borrower, when the terms and conditions specified herein have been satisfied, as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FFB, the Secretary, and the Borrower agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

As used in this Agreement, the following terms shall have the respective meanings specified in this section 1.1, unless the context clearly requires otherwise.

"Advance" shall mean an advance of funds made by FFB under any Note in accordance with the provisions of article 7 of this Agreement.

"Advance Identifier" shall mean, for each Advance, the particular sequence of letters and numbers constituting the Note Identifier plus the particular sequence of additional numbers assigned by FFB to the respective Advance in the interest rate confirmation notice relating to such Advance delivered by FFB in accordance with section 7.7 of this Agreement.

"Advance Request" shall mean a letter from the Borrower requesting an Advance under any Note, in the form of letter attached as Exhibit A to this Agreement.

"Advance Request Approval Notice" shall mean the written notice from the Department located at the end of an Advance Request advising FFB that such Advance Request has been approved by or on behalf of the Secretary.

"Borrower Instruments" shall have the meaning specified in section 3.2.1 of this Agreement.

"Business Day" shall mean any day on which FFB and the Federal Reserve Bank of New York are both open for business.

"Certificate Specifying Authorized Borrower Officials" shall mean a certificate of the Borrower specifying the names and titles of those officials of the Borrower who are authorized to execute and deliver from time to time Advance Requests on behalf of the Borrower, and containing the original signature of each of those officials, substantially in the form of the Certificate Specifying Authorized Borrower Officials attached as Exhibit B to this Agreement.

"Certificate Specifying Authorized Department Officials" shall mean a certificate specifying the names and titles of those officials of the Department who are authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the original signature of each of those authorized officials, and specifying the name and title of those officials of the Department who are authorized to confirm telephonically the authenticity of the Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the telephone number of each of those authorized officials, in the form of the Certificate Specifying Authorized Department Officials attached as Annex 1 to the Program Financing Agreement.

"Department" shall mean the Department of Energy.

"Designation Notice" shall mean, generally, a notice from the Secretary to FFB and the particular entity identified therein as the respective "Borrower," designating that entity to be a "Borrower" for purposes of the Program Financing Agreement, in the form of notice that is attached as Annex 2 to the Program Financing Agreement; and "*the* Designation Notice" shall mean the particular Designation Notice delivered by the Secretary to FFB and the Borrower designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement.

"Governmental Approval" shall mean any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental

Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Authority" shall mean any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial, regulatory, or administrative function of government.

"Governmental Judgment" shall mean any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Registration" shall mean any registration, filing, declaration, or notice, or any other action of a similar nature, with or to a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Rule" shall mean any statute, law, rule, regulation, code, or ordinance of a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Holder" shall mean, with respect to any Note, FFB, for so long as it shall be the holder of such Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of such Note.

"Loan Commitment Amount" shall mean $465,047,000.

"Material Adverse Effect on the Borrower" shall mean any material adverse effect on the financial condition, operations, business or prospects of the Borrower or any affiliated guarantor of the Borrower, or on the ability of the Borrower to perform its obligations under this Agreement or any of the other Borrower Instruments.

"Note" shall mean any future advance promissory note issued by the Borrower payable to FFB, in the form of note that is attached as Exhibit C to this Agreement, as such Note may be amended, supplemented, and restated from time to time in accordance with its terms.

"Note Identifier" shall mean, with respect to each Note, the particular sequence of letters and numbers assigned by FFB to the respective Note in the Principal Instruments acceptance notice relating to such Note delivered by FFB in accordance with section 5.1 of this Agreement.

"Opinion of Borrower's Counsel re: Borrower Instruments" shall mean an opinion of counsel from counsel to the Borrower, substantially in the form of opinion that is attached as Exhibit D to this Agreement.

"Opinion of Secretary's Counsel re: Secretary's Affirmation" shall mean an opinion of counsel from counsel to the Secretary, substantially in the form of opinion that is attached as Exhibit E to this Agreement.

"Other Debt Obligation" shall mean any note or any other evidence of an obligation for borrowed money of a similar nature, made or issued by the Borrower (other than the Notes purchased by FFB under this Agreement), or any mortgage, indenture, deed of trust or loan agreement with respect thereto to which the Borrower is a party or by which the Borrower or any of its properties is bound (other than this Agreement).

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, trust company, unincorporated organization or Governmental Authority.

"Principal Instruments" shall have the meaning specified in section 4.2 of this Agreement.

"Program Authority" shall mean section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended from time to time, including as amended by section 129 of Division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578).

"Program Financing Commitment Amount" shall have the meaning specified in section 1.1 of the Program Financing Agreement.

"Program Financing Agreement" shall mean the Program Financing Agreement dated as of September 16, 2009, between FFB and the Secretary, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Requested Advance Amount" shall have the meaning specified in section 7.3.1(a)(2) of this Agreement.

"Requested Advance Date" shall have the meaning specified in section 7.3.1(a)(3) of this Agreement.

"Secretary's Affirmation" shall mean the affirmation of the Note issued by the Secretary, in the form of affirmation that is attached as Exhibit F to this Agreement.

"Secretary's Certificate" shall mean the certificate relating to the Secretary's Affirmation and other matters, in the form of certificate that is attached as Exhibit G to this Agreement.

"Secretary's Instruments" shall have the meaning specified in section 3.3.1 this Agreement.

"this Agreement" shall mean this Note Purchase Agreement among FFB, the Secretary, and the Borrower.

"Uncontrollable Cause" shall mean an unforeseeable cause beyond the control and without the fault of FFB, being: act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, disruption or failure of the Treasury Financial Communications System, closure of the Federal Government, or an unforeseen or unscheduled closure or evacuation of the FFB offices.

Section 1.2 Rules of Interpretation.

Unless the context shall otherwise indicate, the terms defined in section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural.

The words "herein," "hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE 2

FFB COMMITMENT TO PURCHASE THE NOTE

Subject to the terms and conditions of this Agreement, FFB agrees to purchase the Notes that are offered by the Borrower to FFB for purchase under this Agreement.

ARTICLE 3

COMMITMENT CONDITIONS

FFB shall be under no obligation to purchase the Notes under this Agreement unless and until each of the conditions specified in this article 3 has been satisfied.

Section 3.1 Commitment Amount Limits.

3.1.1 Loan Commitment Amount. The aggregate maximum principal amount of the Notes that are offered for purchase shall not exceed the Loan Commitment Amount.

3.1.2 Program Financing Commitment Amount. At the time that each Note is offered to FFB for purchase under this Agreement, the aggregate maximum principal amount of the Notes, when added to the aggregate maximum principal amount of all other notes that have been issued by entities that have been designated by the Secretary in Designation Notices to be "Borrowers" for purposes of the Program Financing Agreement and in connection with which the Secretary has undertaken certain reimbursement obligations pursuant to the Program Authority, shall not exceed the Program Financing Commitment Amount.

Section 3.2 Borrower Instruments.

3.2.1 Borrower Instruments. FFB shall have received from the Borrower the following instruments (such instruments being, collectively, the "Borrower Instruments"):

(a) an original counterpart of this Agreement, duly executed by the Borrower; and

(b) each original Note described in the Designation Notice, with all of the blanks on page 1 of each Note filled in with information consistent with the information set out in the Designation Notice, and duly executed by the Borrower.

3.2.2 Opinion of Borrower's Counsel re: Borrower Instruments. FFB shall have received from the Borrower an Opinion of Borrower's Counsel re: Borrower Instruments.

3.2.3 Certificate Specifying Authorized Borrower Officials. FFB shall have received from the Borrower a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 3.3 Secretary's Instruments.

3.3.1 Secretary's Instruments. FFB shall have received from the Secretary the following instruments (such instruments being, collectively, the "Secretary's Instruments"):

(a) an original counterpart of this Agreement, duly executed by or on behalf of the Secretary;

(b) the original Secretary's Affirmation relating to the Notes, duly executed by or on behalf of the Secretary; and

(c) an original Secretary's Certificate relating to the Secretary's Affirmation and other matters, duly executed by or on behalf of the Secretary.

3.3.2 Opinion of Secretary's Counsel re: Secretary's Affirmation. FFB shall have received an Opinion of Secretary's Counsel re: Secretary's Affirmation.

Section 3.4 Conditions Specified in Other Agreements.

Each of the conditions specified in the Program Financing Agreement as being conditions to purchasing the Note shall have been satisfied, or waived by both FFB and the Secretary.

ARTICLE 4

OFFER OF THE NOTES FOR PURCHASE

The Notes that are to be offered to FFB for purchase under this Agreement shall be offered in accordance with the procedures described in this article 4.

Section 4.1 Delivery of Borrower Instruments to the Secretary.

The Borrower shall deliver to the Secretary, for redelivery to FFB, the following:

(a) all of the Borrower Instruments, each duly executed by the Borrower;

(b) an Opinion of Borrower's Counsel re: Borrower Instruments; and

(c) a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 4.2 Delivery of Principal Instruments by the Secretary to FFB.

The Secretary shall deliver to FFB all of the following instruments (collectively being the "Principal Instruments"):

(a) all of the instruments described in section 4.1;

(b) all of the Secretary's Instruments, each duly executed by the Secretary; and

(c) an Opinion of Secretary's Counsel re: Secretary's Affirmation.

ARTICLE 5

PURCHASE OF THE NOTES BY FFB

Section 5.1 Acceptance or Rejection of Principal Instruments.

Within 5 Business Days after delivery to FFB of the Principal Instruments relating to the Notes that are offered for purchase under this Agreement, FFB shall deliver by facsimile transmission (fax) to the Department one of the following:

(a) an acceptance notice, which notice shall:

(1) state that the Principal Instruments meet the terms and conditions detailed in article 3 of this Agreement, or are otherwise acceptable to FFB; and

(2) assign a Note Identifier to each Note for use by the Borrower and the Department in all communications to FFB making reference to the respective Note; or

(b) a rejection notice, which notice shall state that one or more of the Principal Instruments does not meet the terms and conditions of this Agreement and specify how such instrument or instruments does not meet the terms and conditions of this Agreement.

Section 5.2 Purchase.

FFB shall not be deemed to have accepted the Notes offered for purchase under this Agreement until such time as FFB shall have delivered an acceptance notice accepting the Principal Instruments relating to the Notes; provided, however, that in the event that FFB shall make an Advance under any Note, then FFB shall be deemed to have accepted such Note offered for purchase.

ARTICLE 6

CUSTODY OF NOTE; LOSS OF NOTE, ETC.

Section 6.1 Custody.

FFB shall have custody of each Note purchased under this Agreement until all amounts owed under the respective Note have been paid in full.

Section 6.2 Lost, Stolen, Destroyed, or Mutilated Note.

In the event that any Note purchased under this Agreement shall become lost, stolen, destroyed, or mutilated, the Borrower shall, upon the written request of FFB, execute and deliver, in replacement thereof, a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed, or mutilated Note or, if no interest has been paid thereon, dated the same date as such lost, stolen, destroyed, or mutilated Note. Upon delivery of such replacement Note, the Borrower shall be released and discharged from any further liability on account of the lost, stolen, or destroyed Note. If the Note being replaced has been mutilated, such mutilated Note shall be surrendered to the Borrower for cancellation.

ARTICLE 7

ADVANCES

Section 7.1 Commitment.

Subject to the terms and conditions of this Agreement, FFB agrees to make Advances under each Note for the account of the Borrower.

Section 7.2 Treasury Policies Applicable to Advances.

Each of the Borrower and the Secretary understands and consents to the following Treasury financial management policies generally applicable to all advances of funds:

(a) each Advance will be requested by the Borrower, and each Advance Request will be approved by the Secretary, only at such time and in such amount as shall be necessary to meet the immediate payment or disbursing need of the Borrower;

(b) except for Advances to reimburse the Borrower for expenditures that it has made from its own working capital, each Advance will be requested to be disbursed directly to the Person(s) to whom the Borrower is obligated to make payments;

(c) Advances for investment purposes will not be requested by the Borrower or approved by the Secretary; and

(d) all interest earned on any lawful and permitted investment of Advances in excess of the interest accrued on such Advances will be remitted to FFB.

Section 7.3 Conditions to Making Advances.

FFB shall be under no obligation to make any Advance under any Note unless and until each of the conditions specified in this section 7.3 is satisfied.

7.3.1 Advance Requests. For each Advance under any Note, the Borrower shall have delivered to the Secretary, for review and approval before being forwarded to FFB, an Advance Request, which Advance Request:

(a) shall specify, among other things:

(1) the particular "Note Identifier" that FFB assigned to the respective Note (as provided in section 5.1 of this Agreement;

(2) the particular amount of funds that the Borrower requests to be advanced (such amount being the "Requested Advance Amount" for the respective Advance);

(3) the particular calendar date that the Borrower requests to be the date on which the respective Advance is to be made (such date being

the "Requested Advance Date" for such Advance), which date:

(A) must be a Business Day; and

(B) shall not be earlier than the third Business Day to occur after the date on which FFB shall have received the respective Advance Request; and

(4) the particular bank account to which the Borrower requests that the respective Advance be made;

(b) shall have been duly executed by an official of the Borrower whose name and signature appear on the Certificate Specifying Authorized Borrower Officials delivered by the Borrower to FFB pursuant to section 3.2.3 of this Agreement; and

(c) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.2 Advance Request Approval Notice. For each Advance, the Secretary shall have delivered to FFB the Borrower's executed Advance Request, together with the Department's executed Advance Request Approval Notice, which Advance Request Approval Notice:

(a) shall have been duly executed on behalf of the Secretary by an official of the Department whose name and signature appear on the Certificate Specifying Authorized Department Officials delivered to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and

(b) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.3 Telephonic Confirmation of Authenticity of Advance Request Approval Notices. For each Advance, FFB shall have obtained telephonic confirmation of the authenticity of the related Advance Request Approval Notice

from an official of the Department (a) whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and (b) who is not the same official of the Department who executed the Advance Request Approval Notice on behalf of the Secretary.

7.3.4 Note Maximum Principal Amount Limit. At the time of making any Advance under any Note, the amount of such Advance, when added to the aggregate amount of all Advances previously made under such Note, shall not exceed the maximum principal amount of such Note.

7.3.5 Conditions Specified in Other Agreements. Each of the conditions specified in the Program Financing Agreement as being conditions to making Advances under each Note, shall have been satisfied, or waived by both FFB and the Secretary.

Section 7.4 Amount and Timing of Advances.

FFB shall make each Advance in the Requested Advance Amount specified in the respective Advance Request and on the Requested Advance Date specified in the respective Advance Request, subject to satisfaction of the conditions specified in section 7.3 of this Agreement and subject to the following additional limitations:

(a) in the event that the Requested Advance Date specified in the respective Advance Request is not a Business Day, FFB shall make the respective Advance on the first day thereafter that is a Business Day;

(b) in the event that FFB receives the respective Advance Request and the related Advance Request Approval Notice later than the third Business Day before the Requested Advance Date specified in such Advance Request, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the third Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date;

(c) in the event that an Uncontrollable Cause prevents FFB from making the respective Advance on the Requested Advance Date specified in the respective Advance Request, FFB shall make such Advance as soon as such Uncontrollable Cause ceases to prevent FFB from making such Advance, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date; and

(d) in the event that FFB receives, not later than 3:30 p.m. (Washington, DC, time) on the Business Day immediately before the Requested Advance Date specified in an Advance Request, a written notice delivered by facsimile transmission of withdrawal or cancellation of the Advance Request Approval Notice, and telephonic confirmation of the withdrawal or cancellation, from an official of the Department whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement, FFB shall not make the respective Advance.

Section 7.5 Type of Funds and Means of Advance.

Each Advance shall be made in immediately available funds by electronic funds transfer to such bank account(s) as shall have been specified in the respective Advance Request.

Section 7.6 Interest Rate Applicable to Advances.

The rate of interest applicable to each Advance made under any Note shall be established as provided in paragraph 6 of such Note.

Section 7.7 Interest Rate Confirmation Notices.

After making each Advance, FFB shall deliver, by facsimile transmission, to the Borrower and the Department written confirmation of the making of the respective Advance, which confirmation shall:

(a) state the date on which such Advance was made;

(b) state the interest rate applicable to such Advance; and

(c) assign an Advance Identifier to such Advance for use by the Borrower and the Department in all communications to FFB making reference to such Advance.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES BY THE BORROWER

The Borrower makes the representations and warranties provided in this article 8 to FFB.

Section 8.1 Organization.

The Borrower is a corporation duly organized, validly existing and in good standing under the laws of Delaware and is qualified to do business in the State of California.

Section 8.2 Authority.

The Borrower has all requisite corporate power and authority to carry on its business as presently conducted, to execute and deliver this Agreement and each of the other Borrower Instruments, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder.

Section 8.3 Due Authorization.

The execution and delivery by the Borrower of this Agreement and each of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby and thereby, and the performance by the Borrower of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action.

Section 8.4 Due Execution.

This Agreement has been, and each of the other Borrower Instruments will have been at the respective time of delivery of each thereof, duly executed and delivered by officials of the

Borrower who are duly authorized to execute and deliver such documents on its behalf.

Section 8.5 Validity and Enforceability.

This Agreement constitutes, and each of the other Borrower Instruments will constitute at the respective time of delivery of each thereof, the legal, valid, and binding agreement of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to (i) the effect of insolvency or bankruptcy laws or other similar laws affecting generally the enforcement of creditors' rights, and (ii) principles of equity.

Section 8.6 No Governmental Actions Required.

No Governmental Approvals or Governmental Registrations are now, or under existing Governmental Rules will in the future be, required to be obtained or made, as the case may be, by the Borrower to authorize the execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, or the performance by the Borrower of its obligations hereunder or thereunder, other than Governmental Approvals and Governmental Registrations that have been previously obtained or made and future Governmental Approvals and Governmental Registrations that shall have been obtained or made at the time each such Governmental Approval or Governmental Registration is required.

Section 8.7 No Conflicts or Violations.

The execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, and the performance by the Borrower of its obligations hereunder or thereunder do not and will not conflict with or violate, result in a breach of, or constitute a default under (a) any term or provision of the charter documents or bylaws of the Borrower; (b) any of the covenants, conditions or agreements contained in any Other Debt Obligation of the Borrower; (c) any Governmental Approval or Governmental Registration obtained or made, as the case may be, by the Borrower; or (d) any Governmental Judgment or Governmental Rule currently applicable to the Borrower; except with respect to (b), (c), or (d) where such conflict, violation,

breach, or default could not reasonably be expected to have a Material Adverse Effect on the Borrower.

Section 8.8 All Necessary Governmental Actions.

The Borrower has not failed to obtain any material Governmental Approval or make any material Governmental Registration required or necessary to carry on the business of the Borrower as presently conducted, and the Borrower reasonably believes that it will not be prevented by any Governmental Authority having jurisdiction over the Borrower from so carrying on its business as presently conducted.

Section 8.9 No Material Litigation.

There are no lawsuits or judicial or administrative actions, proceedings or investigations pending or, to the best knowledge of the Borrower, threatened against the Borrower which, in the reasonable opinion of the Borrower, is likely to have a Material Adverse Effect on the Borrower.

ARTICLE 9

BILLING BY FFB

Section 9.1 Billing Statements to the Borrower and the Department.

FFB shall prepare a billing statement for the amounts owed to FFB on each Advance that is made under each Note purchased under this Agreement, and shall deliver each such billing statement to the Borrower and the Department.

Section 9.2 Failure to Deliver or Receive Billing Statements No Release.

Failure on the part of FFB to deliver any billing statement or failure on the part of the Borrower to receive any billing statement shall not, however, relieve the Borrower of any of its payment obligations under the Note or this Agreement.

Section 9.3 FFB Billing Determinations Conclusive.

9.3.1 Acknowledgment and Consent. The Borrower acknowledges that FFB has described to it:

(a) the rounding methodology employed by FFB in calculating the amount of accrued interest owed at any time on each Note; and

(b) the methodology employed by FFB in calculating the equal principal installments payment schedule for amounts due and payable on each Note;

and the Borrower consents to these methodologies.

9.3.2 Agreement. The Borrower agrees that any and all determinations made by FFB shall, absent manifest error, be conclusive and binding upon the Borrower with respect to:

(a) the amount of accrued interest owed on each Note determined using this rounding methodology; and

(b) the amount of any equal principal installments payment due and payable on each Note determined using this methodology.

ARTICLE 10

PAYMENTS TO FFB

Each amount that becomes due and owing on each Note purchased under this Agreement shall be paid when and as due, as provided in the respective Note.

ARTICLE 11

SECRETARY'S RIGHT TO PURCHASE ADVANCES OR ANY NOTE

Notwithstanding the provisions of each of the Notes, the Borrower acknowledges that, under the terms of the Program Financing Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under any Note, or

may purchase from FFB any Note in its entirety, in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the terms of such Note, to a prepayment by the Borrower of all or any portion of any Advance made under such Note, or a prepayment by the Borrower of such Note in its entirety, as the case may be.

ARTICLE 12

EFFECTIVE DATE, TERM, SURVIVAL

Section 12.1 Effective Date.

This Agreement shall be effective as of the date first above written.

Section 12.2 Term of Commitment to Make Advances.

The obligation of FFB under this Agreement to make Advances under each Note issued by the Borrower shall expire on the "Last Day for an Advance" specified in the respective Note.

Section 12.3 Survival.

12.3.1 Representations, Warranties, and Certifications. Except to the extent waived by both FFB and the Secretary, all representations, warranties, and certifications made by the Borrower in this Agreement, or in any agreement, instrument, or certificate delivered pursuant hereto, shall survive the execution and delivery of this Agreement, the purchasing of the Notes hereunder, and the making of Advances thereunder.

12.3.2 Remainder of Agreement. Notwithstanding the occurrence and passage of the Last Day for an Advance, the remainder of this Agreement shall remain in full force and effect until all amounts owed under this Agreement and each of the Notes purchased by FFB under this Agreement have been paid in full.

ARTICLE 13

MISCELLANEOUS

Section 13.1 Notices.

13.1.1 Addresses of the Parties. All notices and other communications hereunder or under any Note to be made to any party shall be in writing and shall be addressed as follows:

To FFB:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Telephone No. (202) 622-2470
Facsimile No. (202) 622-0707

To the Borrower:

Tesla Motors, Inc.
1050 Bing StreetSan Carlos, CA 94070

Attention: Deepak Ahuja
Chief Financial Officer

Telephone: (650) 701-2690
Facsimile: (650) 701-2613

To the Secretary (or the Department):

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Telephone No. (202) 586-8146

Facsimile No. (202) 586-7809

Copies of all legal notices and correspondence should also be sent to:

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone No. (202) 586-5281
Facsimile No. (202) 586-1499

The address, telephone number, or facsimile number for any party may be changed at any time and from time to time upon written notice given by such changing party to each of the other parties hereto.

13.1.2 Permitted Means of Delivery. Advance Requests, notices, and other communications to FFB may be delivered by facsimile (fax) transmission of the executed instrument.

13.1.3 Effective Date of Delivery. A properly addressed notice or other communication shall be deemed to have been "delivered" for purposes of this Agreement:

(a) if made by personal delivery, on the date of such personal delivery;

(b) if mailed by first class mail, registered or certified mail, express mail, or by any commercial overnight courier service, on the date that such mailing is received;

(c) if sent by facsimile (fax) transmission:

(1) if the transmission is received and receipt confirmed before 4:00 p.m. (Washington, DC, time) on any Business Day, on the date of such transmission; and

(2) if the transmission is received and receipt confirmed after 4:00 p.m. (Washington, DC, time) on any Business Day or any day that is not a Business Day, on the next Business Day.

13.1.4 Notices to FFB to Contain FFB Identification References. All notices to FFB making any reference to any Note or any Advance made under such Note shall identify the respective Note or such Advance by the respective Note Identifier or the respective Advance Identifier, as the case may be, assigned by FFB to such Note or such Advance.

Section 13.2 Amendments.

No provision of this Agreement may be amended, modified, supplemented, waived, discharged, or terminated orally but only by an instrument in writing duly executed by each of the parties hereto and consented to in writing by or on behalf of the Secretary.

Section 13.3 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of each of FFB, the Borrower, and the Secretary, and each of their respective successors and assigns.

Section 13.4 Sale or Assignment of Note.

13.4.1 Sale or Assignment Permitted. FFB may sell, assign, or otherwise transfer all or any part of any Note or any participation share thereof; provided, however, that, notwithstanding the foregoing, following any such sale, assignment or transfer, FFB shall continue to be fully liable for its duties and obligations hereunder and under such Note.

13.4.2 Notice of Sale, Etc.

(a) Sale, Etc., to a Federal Entity. In the case of any sale, assignment, or other transfer by FFB of all or any part of any Note or any participation share thereof to an agency or instrumentality of the United States or a trust fund or other government account under the authority or control of the United States or any officer or officers thereof, FFB will deliver to the Borrower and the Department written notice of such sale, assignment, or other transfer promptly after such sale, assignment, or other transfer.

(b) Sale, Etc., to Other Than a Federal Entity. In the case of any sale, assignment, or other transfer by FFB of all or any part of any Note or any participation share thereof to a purchaser, assignee, or transferee that is not an agency or instrumentality of the United States or a trust fund or other government account under the authority or control of the United States or any officer or officers thereof, FFB will deliver to the Borrower and the Department written notice of such sale, assignment, or other transfer at least 45 calendar days in advance of such sale, assignment, or other transfer.

13.4.3 Manner of Payment after Sale. Any sale, assignment, or other transfer of all or any part of any Note may provide that, following such sale, assignment, or other transfer, payments on such Note shall be made in the manner specified by the respective purchaser, assignee, or transferee, as the case may be.

13.4.4 Replacement Notes. The Borrower agrees:

(a) to issue a replacement Note or Notes with the same aggregate principal amount, interest rate, maturity, and other terms as each respective Note or Notes sold, assigned, or transferred pursuant to section 13.4.1 of this Agreement; provided, however, that, when requested by the respective purchaser, assignee, or transferee, such replacement Note or Notes shall provide that payments thereunder shall be made in the manner specified by such purchaser, assignee, or transferee; and

(b) to effect the change in ownership on its records and on the face of each such replacement Note issued, upon receipt of each Note or Notes so sold, assigned, or transferred.

Section 13.5 Forbearance Not a Waiver.

Any forbearance on the part of FFB from enforcing any term or condition of this Agreement shall not be construed to be a waiver of such term or condition or acquiescence by FFB in any failure on the part of Borrower to comply with or satisfy such term or condition.

Section 13.6 Rights Confined to Parties.

Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give to, any Person other than FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements contained herein shall be for the sole and exclusive benefit of FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns.

Section 13.7 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

Section 13.8 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 13.9 Headings.

The descriptive headings of the various articles, sections, and subsections of this Agreement were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 13.10 Counterparts.

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an

original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, FFB, the Borrower, and the Secretary have each caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: _____

Name: Richard L. Gregg

Title: Vice President

TESLA MOTORS, INC.
(the "Borrower")

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

THE SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized designate

By: _____

Name: Lachlan W. Seward

Title: Director
Advance Technology Vehicles
Manufacturing Loan Program

IN WITNESS WHEREOF, FFB, the Borrower, and the Secretary have each caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: _____

Name: Richard L. Gregg

Title: Vice President

TESLA MOTORS, INC.
(the "Borrower")

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

THE SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized designate

By: _____

Name: Lachlan W. Seward

Title: Director
Advance Technology Vehicles
Manufacturing Loan Program

IN WITNESS WHEREOF, FFB, the Borrower, and the Secretary have each caused this Agreement to be executed as of the day and year first above mentioned.

FEDERAL FINANCING BANK
("FFB")

By: _____

Name: Richard L. Gregg

Title: Vice President

TESLA MOTORS, INC.
(the "Borrower")

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

THE SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized designate

By: _____

Name: Lachlan W. Seward

Title: Director
Advance Technology Vehicles
Manufacturing Loan Program

EXHIBIT A

TO

NOTE PURCHASE AGREEMENT

FORM

OF

ADVANCE REQUEST

ADVANCE REQUEST

****

PLEASE REFER TO DEPARTMENT OF ENERGY (DOE) REGULATIONS AND INSTRUCTIONS FOR A DESCRIPTION OF (1) ANY OTHER FORMS AND MATERIALS THAT DOE REQUIRES TO BE SUBMITTED IN CONNECTION WITH EACH ADVANCE REQUEST, AND (2) THE TIME LIMITS FOR SUBMITTING THOSE FORMS AND MATERIALS AND THIS ADVANCE REQUEST TO DOE.

PLEASE DIRECT ALL QUESTIONS ON HOW TO COMPLETE THIS ADVANCE REQUEST FORM TO THE DOE CONTACT OFFICE INDICATED BELOW:

Director
Advanced Technology Vehicles Manufacturing Loan Program
United States Department of Energy
Telephone No. (202) 586-8146
Facsimile No. (202) 586-7809

WHEN COMPLETED, PLEASE DELIVER THIS FORM (TOGETHER WITH ALL OTHER FORMS AND MATERIAL REQUIRED BY DOE) TO DOE AT THE ADDRESS OF THE DOE CONTACT OFFICE INDICATED BELOW:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

****

Chief Financial Officer
Federal Financing Bank

Reference is made to the following-described Future Advance Promissory Note (the "Note") payable to the Federal Financing Bank ("FFB"):

NAME OF BORROWER (the "Borrower"):

TESLA MOTORS, INC[1]

FFB NOTE IDENTIFIER: _____[2]

The undersigned, as an authorized official of the Borrower, hereby requests FFB to make an advance of funds ("this Advance") under, pursuant to, and in accordance with the applicable terms of the Note.

The undersigned further requests that this Advance be made

---

[1] Insert the corporate name of the Borrower. If the corporate name of the Borrower at the time of this Advance is different from the corporate name that appears on page 1 of the Note, add "(formerly _____)", and insert in this second blank the corporate name of the Borrower as it appears on page 1 of the Note.

[2] Insert the "Note Identifier" that FFB assigned to the Note (as provided in the Note Purchase Agreement).

as follows:

1. **REQUESTED ADVANCE AMOUNT:**

The principal amount of this Advance is requested to be $_____.[3]

2. **REQUESTED ADVANCE DATE:**

This Advance is requested to be made on:

_____.[4]

3. **WIRE INSTRUCTIONS:**

A. Correspondent bank (if any) for payee's bank:

Name of financial institution _____

Address of financial institution _____

ABA number of financial institution _____.

B. Payee's bank and account:

Name of financial institution _____

Address of financial institution _____

ABA number of financial institution _____

Account name _____

Account number _____

Taxpayer ID number _____.

The undersigned certifies that the undersigned has been authorized to execute this Advance Request on behalf of the Borrower and to deliver it to the Secretary of Energy (the "Secretary") for review and approval before being forwarded to FFB, and that this authority is valid and in full force and effect on the date hereof.

---

[3] Insert the particular amount of funds that the Borrower requests to be advanced.

[4] Insert the particular calendar date that the Borrower requests to be date on which this Advance is to be made, which must be a Business Day.

IN WITNESS WHEREOF, the undersigned has executed this Advance Request and caused it to be delivered to the Secretary for review and approval before being forwarded to FFB.

TESLA MOTORS, INC.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ADVANCE REQUEST APPROVAL NOTICE

Notice is hereby given to FFB that the preceding Advance Request made by the Borrower identified therein has been approved on behalf of the Secretary for purposes of the Note identified therein.

SECRETARY OF ENERGY
acting through his or her
duly authorized designate

Signature: _____

Print Name: _____

Title: _____

Date: _____

FOR DOE(ATV) ACCOUNTING USE ONLY:

DOE Budget Account Number: _____

EXHIBIT B

TO

NOTE PURCHASE AGREEMENT

FORM

OF

CERTIFICATE SPECIFYING

AUTHORIZED BORROWER OFFICIALS

See Tab 12

EXHIBIT C

TO

NOTE PURCHASE AGREEMENT

FORMS

OF

NOTES

See Tabs 6A and 6B

EXHIBIT D

TO

NOTE PURCHASE AGREEMENT

FORM

OF

OPINION OF BORROWER'S COUNSEL

re:

BORROWER INSTRUMENTS

See Tab 11

EXHIBIT E

TO

NOTE PURCHASE AGREEMENT

FORM

OF

OPINION OF SECRETARY'S COUNSEL

re:

SECRETARY'S AFFIRMATION

See Tab 8

EXHIBIT F

TO

NOTE PURCHASE AGREEMENT

FORM

OF

SECRETARY'S AFFIRMATION

See Tab 7

EXHIBIT G

TO

NOTE PURCHASE AGREEMENT

FORM

OF

SECRETARY'S CERTIFICATE

See Tab 9

FOR FFB USE ONLY Note Identifier: Purchase Date:	Note Date	January 20, 2010
	Place of Issue	San Carlos, CA
	Last Day for an Advance (¶3)	January 22, 2013
	Maximum Principal Amount (¶4)	$101,186,000
Maturity Date (¶5) September 15, 2019		
Payment Dates (¶7) March 15, June 15, September 15, & December 15 of each year	First Principal Payment Date (¶8)	December 15, 2012

Security Instruments (¶19) as listed in Schedule 1 hereto

FUTURE ADVANCE PROMISSORY NOTE
NOTE P

1. Promise to Pay.

FOR VALUE RECEIVED, TESLA MOTORS, INC. (the "Borrower", which term includes any successors or assigns), promises to pay the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America (FFB, for so long as it shall be the holder of this Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of this Note, being the "Holder"), at the times, in the manner, and with interest at the rates to be established as hereinafter provided, such amounts as may be advanced from time to time by FFB to or for the account of the Borrower under this Note (each such amount being an "Advance" and more than one such amounts being "Advances").

2. **Reference to Certain Agreements.**

(a) Program Financing Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Program Financing Agreement dated as of September 16, 2009, made by and between FFB and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

(b) Note Purchase Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Note Purchase Agreement dated as of even date herewith, made by and among FFB, the Borrower, and the Secretary (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Note Purchase Agreement").

3. **Advances; Advance Requests; Last Day for Advances.**

(a) Subject to the terms and conditions of the Note Purchase Agreement, FFB shall make Advances under this Note in the amounts, at the times, and to the accounts requested by the Borrower from time to time, in each case upon delivery to FFB of a written request by the Borrower for an Advance under this Note, in the form of request attached to the Note Purchase Agreement as Exhibit A thereto (each such request being an "Advance Request"), completed as prescribed in the Note Purchase Agreement.

(b) To be effective, an Advance Request must first be delivered to the Department of Energy for approval and be approved by or on behalf of the Secretary in writing, and such Advance Request, together with written notification of the Secretary's approval thereof, must be received by FFB on or before the third Business Day before the particular calendar date specified in such Advance Request that the Borrower requests to be the date on which the respective Advance is to be made.

(c) The Borrower hereby agrees that FFB, for its purposes, may consider any Advance Request approved by or on behalf of the Secretary and delivered to FFB in accordance with the terms of the Note Purchase Agreement to be an accurate representation of the Borrower's request for an Advance under this Note and the Secretary's approval of that Advance Request.

4. **Principal Amount of Advances; Maximum Principal Amount.**

The principal amount of each Advance shall be the amount specified in the respective Advance Request; provided, however, that the aggregate principal amount of all Advances made under this Note may not exceed the particular amount specified on page 1 of this Note as the "Maximum Principal Amount."

5. **Maturity Date.**

This Note, and each Advance made hereunder, shall mature on the particular date specified on page 1 of this Note as the "Maturity Date" (such date being the "Maturity Date").

6. **Computation of Interest on Each Advance.**

(a) Subject to paragraphs 11 and 14 of this Note, interest on the outstanding principal of each Advance shall accrue from the date on which the respective Advance is made to the date on which such principal is due.

(b) Interest on each Advance shall be computed on the basis of (1) actual days elapsed from (but not including) the date on which the respective Advance is made (for the first payment of interest due under this Note for the respective Advance) or the date on which the payment of interest was last due (for all other payments of interest due under this Note for the respective Advance), to (and including) the date on which payment is next due, and (2) a year of 365 days.

(c) The interest rate applicable to each Advance shall be established by FFB at the time that the respective Advance is made on the basis of the determination made by the Secretary of the Treasury pursuant to section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended (the "Program Authority"); provided, however, that the shortest maturity used as the basis for any basic interest rate determination shall be the remaining maturity of the most recently auctioned United States Treasury bills having the shortest maturity of all United States Treasury bills then being regularly auctioned.

7. **Payment of Interest; Payment Dates.**

Interest accrued on the outstanding principal balance of each Advance shall be due and payable on each of the particular

dates specified on page 1 of this Note as "Payment Dates" (each such date being a "Payment Date"), beginning on the first Payment Date to occur after the date on which such Advance is made, up through and including the Maturity Date.

8. **Payment of Principal.**

(a) The principal amount of each Advance shall be payable in installments, which payments shall be due beginning on the particular date specified as the "First Principal Payment Date" on page 1 of this Note (such date being the "First Principal Payment Date"), and shall be due on each Payment Date to occur thereafter until the principal of the respective Advance is repaid in full on or before the Maturity Date; provided, however, that with respect to each Advance that is made after the First Principal Payment Date, principal installments shall be due beginning on the second Payment Date to occur after the date on which the respective Advance is made.

(b) With respect to each Advance, the amount of principal due on the First Principal Payment Date, on each Payment Date to occur thereafter, and on the Maturity Date shall be, in each case, substantially equal to the amount of every other quarterly installment of principal and shall be sufficient, when added to all other such quarterly installments of equal principal, to repay the principal amount of the respective Advance in full on the Maturity Date.

9. **Business Days.**

(a) Whenever any Payment Date or the Maturity Date shall fall on a day on which either FFB or the Federal Reserve Bank of New York is not open for business, the payment which would otherwise be due on such Payment Date or the Maturity Date shall be due on the first day thereafter on which FFB and the Federal Reserve Bank of New York are both open for business (any such day being a "Business Day").

(b) In the case of a Payment Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on such Payment Date shall (1) be taken into account in establishing the interest rate for each Advance, and (2) be included in computing interest due in connection with such payment and excluded in computing interest due in connection with the next payment.

(c) In the case of the Maturity Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on the Maturity Date shall (1) be taken into account in establishing the interest rate for each Advance, and (2) be included in computing interest due in connection with such payment.

10. Manner of Making Payments.

(a) For so long as FFB is the Holder of this Note, each payment under this Note shall be paid in immediately available funds by electronic funds transfer to the account of the United States Treasury (for credit to the subaccount of FFB) maintained at the Federal Reserve Bank of New York specified by FFB in a written notice to the Borrower, or to such other account as may be specified from time to time by FFB in a written notice to the Borrower.

(b) In the event that FFB is *not* the Holder of this Note, then each payment under this Note shall be made in immediately available funds by electronic funds transfer to such account as shall be specified by the Holder in a written notice to the Borrower.

11. Late Payments.

(a) In the event that any payment of any amount owing under this Note is not made when and as due (any such amount being then an "Overdue Amount"), then the amount payable shall be such Overdue Amount plus interest thereon (such interest being the "Late Charge") computed in accordance with this subparagraph (a):

(1) The Late Charge shall accrue from the scheduled date of payment for the Overdue Amount (taking into account paragraph 9 of this Note) to the date on which payment is made.

(2) The Late Charge shall be computed on the basis of (A) actual days elapsed from (but not including) the scheduled date of payment for such Overdue Amount (taking into account paragraph 9 of this Note) to (and including) the date on which payment is made, and (B) a year of 365 days.

(3) The Late Charge shall accrue at a rate (the "Late Charge Rate") equal to one and one-half times the rate to be

determined by the Secretary of the Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury bills.

(4) The initial Late Charge Rate shall be in effect until the earlier to occur of either (A) the date on which payment of the Overdue Amount and the amount of the accrued Late Charge is made, or (B) the first Payment Date to occur after the scheduled date of payment for such Overdue Amount. In the event that the Overdue Amount and the amount of the accrued Late Charge are not paid on or before the such Payment Date, then the amount payable shall be the sum of the Overdue Amount and the amount of the accrued Late Charge, plus a Late Charge on such sum accruing at a new Late Charge Rate to be then determined in accordance with the principles of clause (3) of this subparagraph (a). For so long as any Overdue Amount remains unpaid, the Late Charge Rate shall be re-determined in accordance with the principles of clause (3) of this subparagraph (a) on each Payment Date to occur thereafter, and shall be applied to the Overdue Amount and all amounts of the accrued Late Charge to the date on which payment of the Overdue Amount and all amounts of the accrued Late Charge is made.

(b) Nothing in subparagraph (a) of this paragraph 11 shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder, modify, extend, alter or affect in any manner whatsoever (except as explicitly provided herein) the right of the Holder to receive any and all payments on account of this Note on the dates specified in this Note.

12. Final Due Date.

Notwithstanding anything in this Note to the contrary, all amounts outstanding under this Note remaining unpaid as of the Maturity Date shall be due and payable on the Maturity Date.

13. Application of Payments.

Each payment made on this Note shall be applied first to the payment of Late Charges (if any) payable under paragraphs 11 and 15 of this Note, then to the payment of premiums (if any) payable under paragraph 14 of this Note, then to the payment of accrued interest, then on account of outstanding principal of this Note.

14. Prepayments.

(a) The Borrower may elect to prepay all or any portion of the outstanding principal amount of any Advance made under this Note, or to prepay this Note in its entirety, in the manner, at the price, and subject to the limitations specified in this paragraph 14 (each such election being a "Prepayment Election").

(b) The Borrower shall deliver to FFB (and if FFB is not the Holder, then also to the Holder) written notification of each Prepayment Election (each such notification being a "Prepayment Election Notice"), specifying:

(1) the Advance Identifier that FFB assigned to the respective Advance (as provided in the Note Purchase Agreement);

(2) the particular date on which the Borrower intends to prepay the respective Advance (such date being the "Intended Prepayment Date" for the respective Advance), which date must be a Business Day; and

(3) the amount of principal of the respective Advance that the Borrower intends to prepay, which amount may be either:

(A) the total outstanding principal amount of such Advance; or

(B) an amount less than the total outstanding principal amount of such Advance (any such amount being a "Portion").

(c) To be effective, a Prepayment Election Notice must be received by FFB (and if FFB is not the Holder, then also by the Holder) on or before the fifth Business Day before the date specified therein as the Intended Prepayment Date for the respective Advance or Portion.

(d) The Borrower shall pay to the Holder a price for the prepayment of any Advance or Portion (such price being the "Prepayment Price" for such Advance or Portion) determined as follows:

(1) in the event that the Borrower elects to prepay the entire outstanding principal amount of any Advance, then the

Borrower shall pay to the Holder a Prepayment Price for such Advance equal to the sum of:

(A) the price for such Advance that would, if such Advance (including all unpaid interest accrued thereon through the Intended Prepayment Date) were purchased by a third party and held to the Maturity Date, produce a yield to the third-party purchaser for the period from the date of purchase to the Maturity Date substantially equal to the interest rate that would be set on a loan from the Secretary of the Treasury to FFB to purchase an obligation having a payment schedule identical to the payment schedule of such Advance for the period from the Intended Prepayment Date to the Maturity Date; and

(B) all unpaid Late Charges (if any) accrued on such Advance through the Intended Prepayment Date;

(2) in the event that the Borrower elects to prepay a Portion of any Advance, then the Borrower shall pay to the Holder a Prepayment Price for such Portion that would equal such Portion's pro rata share of the Prepayment Price that would be required for a prepayment of the entire principal amount of such Advance (determined in accordance with the principles of clause (1) of this subparagraph (d)); and

(3) in the event that the Borrower elects to prepay this Note in its entirety, then the Borrower shall pay to the Holder an amount equal to the sum of the Prepayment Prices for all outstanding Advances (determined in accordance with the principles of clause (1) of this subparagraph (d)).

The price described in subclause (A) of clause (1) of this subparagraph (d) shall be calculated by the Secretary of the Treasury as of the close of business on the second Business Day before the Intended Prepayment Date, using standard calculation methods of the United States Department of the Treasury. FFB shall deliver by facsimile transmission (fax) to the Borrower a written notice by 12:00 noon (Washington, DC, time) on the Business Day immediately preceding the Intended Prepayment Date specifying the Prepayment Price for the Advance or Portion and setting out separately principal, accrued interest, premium (if any), and Late Charges (if any); provided, however, that failure on the part of FFB to deliver any notice of the Prepayment Price

by 12:00 noon (Washington, DC, time) or failure on the part of the Borrower to receive any notice of the Prepayment Price shall not relieve the Borrower of the payment obligation described in subparagraph (e) of this paragraph 14, but rather shall give rise to a responsibility on the part of the Borrower to make inquiry to FFB for the Purchase Price.

(e) Payment of the Prepayment Price for any Advance or any Portion shall be due to the Holder before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date for such Advance or Portion.

(f) Each prepayment of a Portion shall, as to the principal amount of such Portion, be subject to a minimum amount equal to $100,000.00 of principal; except that the minimum principal amount limitation shall not apply to a prepayment of a Portion if:

(1) the prepayment is made to satisfy the Borrower's obligation to make a mandatory prepayment under the "Security Instruments" (as that term is defined in paragraph 19 of this Note); and

(2) the Borrower has certified to that fact in the respective Prepayment Election Notice.

(g) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the Prepayment Price paid for such Portion will be applied as provided in paragraph 13 of this Note, and, with respect to application to outstanding principal, such Prepayment Price shall be applied to principal installments in the inverse order of maturity.

(h) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the outstanding principal amount of such Advance, from and after such partial prepayment, shall be due and payable in accordance with this subparagraph (h).

(1) The amount of the quarterly principal installments that will be due after such partial prepayment shall be equal to the quarterly installments of equal principal that were due in accordance with the level principal repayment schedule that applied to such Advance immediately before such partial prepayment.

(2) The equal payments of principal shall be due beginning on the first Payment Date to occur after such partial prepayment, and shall be due on each Payment Date to occur thereafter up through and including the date on which the entire principal amount of such Advance and all unpaid interest (and Late Charges, if any) accrued thereon, are paid.

15. Rescission of Prepayment Elections; Late Charges for Late Payments of Prepayment Prices.

(a) The Borrower may rescind any Prepayment Election made in accordance with paragraph 14 of this Note, but only in accordance with this paragraph 15.

(b) The Borrower shall deliver to FFB written notification of each rescission of a Prepayment Election (each such notification being an "Election Rescission Notice") specifying the particular Advance for which the Borrower wishes to rescind such Prepayment Election, which specification must make reference to the particular "Advance Identifier" (as that term is defined in the Note Purchase Agreement) that FFB assigned to such Advance (as provided in the Note Purchase Agreement). The Election Rescission Notice may be delivered by facsimile transmission to FFB at (202) 622-0707 or at such other facsimile number or numbers as FFB may from time to time communicate to the Borrower.

(c) To be effective, an Election Rescission Notice must be received by FFB not later than 3:30 p.m. (Washington, DC, time) on the second Business Day before the Intended Prepayment Date.

(d) In the event that the Borrower (1) makes a Prepayment Election in accordance with paragraph 14 of this Note, (2) does not rescind such Prepayment Election in accordance with this paragraph 15, and (3) does not, before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date, pay to FFB the Prepayment Price described in paragraph 14(d) of this Note, then a Late Charge shall accrue on any such unpaid amount from the Intended Prepayment Date to the date on which payment is made, computed in accordance with the principles of paragraph 11 of this Note.

16. Amendments to Note.

To the extent not inconsistent with applicable law, this Note shall be subject to modification by such amendments,

extensions, and renewals as may be agreed upon from time to time by the Holder and the Borrower, with the approval of the Secretary.

17. Certain Waivers.

The Borrower hereby waives any requirement for presentment, protest, or other demand or notice with respect to this Note.

18. Effective Until Paid.

Except as provided in section 6.2 of the Note Purchase Agreement, this Note shall continue in full force and effect until all amounts due and payable hereunder have been paid in full.

19. Security Instruments; Secretary as "Holder" of Note for Purposes of the Security Instruments.

This Note is one of the notes permitted to be executed and delivered by, and is entitled to the benefits and security of, the particular security instruments specified on page 1 of this Note (such security instruments, as they may have heretofore been, and as they may hereafter be, amended, supplemented, restated, or consolidated from time to time in accordance with its or their terms, being, collectively, the "Security Instruments"), whereby the Borrower pledged and granted a security interest in certain property of the Borrower, described therein, to secure the payment and performance of certain obligations owed to the Secretary and any other Holder of this Note or participation share hereof, as set forth in the Security Instruments. For purposes of the Security Instruments, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase Agreement, and the affirmation by the Secretary dated as of even date herewith, delivered by the Secretary to FFB as provided in the Note Purchase Agreement (the "Secretary's Affirmation"), the Secretary shall be considered to be, and shall have the rights, powers, privileges, and remedies of, the Holder of this Note.

20. Default and Enforcement.

In case of a default by the Borrower under this Note or the occurrence of an event of default under the Security Instruments, then, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase

Agreement, and the Secretary's Affirmation, the Secretary, in his own name, shall have all rights, powers, privileges, and remedies of the Holder of this Note, in accordance with the terms of this Note and the Security Instruments, including, without limitation, the right to enforce or collect all or any part of the obligation of the Borrower under this Note or arising as a result of the Secretary's Affirmation, to file proofs of claim or any other document in any bankruptcy, insolvency, or other judicial proceeding, and to vote such proofs of claim.

21. Acceleration.

The entire unpaid principal amount of this Note, and all interest thereon, may be declared, and upon such declaration shall become, due and payable to the Secretary, under the circumstances described, and in the manner and with the effect provided, in the Security Instruments.

22. Governing Law.

This Note shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed in its corporate name and its corporate seal to be hereunder affixed and attested by its officers thereunto duly authorized, all as of the day and year first above written.

TESLA MOTORS, INC.

BY:

Signature: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

ATTEST:

Signature: _____

(SEAL)

Print Name: CRAIG W. HARDING

Title: Assistant Secretary

SCHEDULE 1
Security Instruments

1. Loan Arrangement and Reimbursement Agreement, between Tesla Motors, Inc. and the United States Department of Energy (the "Arrangement Agreement");

2. Collateral Trust Agreement among Tesla Motors, Inc., each Guarantor (as defined in the Arrangement Agreement), and Midland Loan Services, Inc., as collateral trustee;

3. Pledge and Security Agreement among Tesla Motors, Inc., each Guarantor (as defined in the Arrangement Agreement) and Midland Loan Services, Inc., as collateral trustee;

4. Guarantee by Tesla Motors New York LLC and any other Subsidiaries of Borrower that become a Guarantor thereunder in favor of the United States Department of Energy, FFB and each other holder from time to time of the Notes;

5. Notice of Grant of Security Interest in Patents made by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., as collateral trustee;

6. Notice of Grant of Security Interest in Trademarks made by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., as collateral trustee;

7. Deposit Account Control Agreement among Tesla Motors, Inc., City National Bank and Midland Loan Services, Inc., as collateral trustee;

8. Restricted Account and Securities Account Control Agreement among Tesla Motors, Inc., Wells Fargo Bank, National Association and Midland Loan Services, Inc., as collateral trustee;

9. Securities Account Consent - Control Agreement among Tesla Motors, Inc., Wells Fargo Securities, LLC and Midland Loan Services, Inc., as collateral trustee

10. Deposit Account Control Agreement among Tesla Motors, Inc., HSBC Bank USA, National Association and Midland Loan Services, Inc., as collateral trustee;

11. Blocked Account Control Agreement (Dedicated Account) among Tesla Motors, Inc., PNC Bank, N.A. and Midland Loan Services, Inc., as collateral trustee;

12. Blocked Account Control Agreement (Initial Debt Service Account) among Tesla Motors, Inc., PNC Bank, N.A. and Midland Loan Services, Inc., as collateral trustee;

13. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors GmbH and Midland Loan Services, Inc., as collateral trustee;

14. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors Taiwan Limited and Midland Loan Services, Inc., as collateral trustee;

15. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors S.A.R.L. and Midland Loan Services, Inc., as collateral trustee;

16. Collateral Access Agreement among The Board of Trustees of the Leland Stanford Junior University, the United States Department of Energy and Tesla Motors, Inc.;

17. Intercompany Subordination Agreement among Tesla Motors, Inc., each Guarantor, and Midland Loan Services, Inc., as collateral trustee; and

18. Each other security document delivered to the United States Department of Energy and/or the Collateral Trustee granting a Lien (as defined in the Arrangement Agreement) on any property of any person to secure the Secured Obligations (as defined in the Arrangement Agreement), including the obligations of Tesla Motors, Inc. under Note P.

FOR FFB USE ONLY Note Identifier: Purchase Date:	Note Date: January 20, 2010 Place of Issue: San Carlos, CA Last Day for an Advance (¶3): January 22, 2013 Maximum Principal Amount (¶4): $363,861,000 Maturity Date (¶5): September 15, 2022 Payment Dates (¶7): March 15, June 15, September 15, & December 15 of each year First Principal Payment Date (¶8): December 15, 2012 Security Instruments (¶19): as listed in Schedule 1 hereto

FUTURE ADVANCE PROMISSORY NOTE
NOTE S

1. **Promise to Pay.**

FOR VALUE RECEIVED, TESLA MOTORS, INC. (the "Borrower", which term includes any successors or assigns), promises to pay the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America (FFB, for so long as it shall be the holder of this Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of this Note, being the "Holder"), at the times, in the manner, and with interest at the rates to be established as hereinafter provided, such amounts as may be advanced from time to time by FFB to or for the account of the Borrower under this Note (each such amount being an "Advance" and more than one such amounts being "Advances").

2. **Reference to Certain Agreements.**

(a) Program Financing Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Program Financing Agreement dated as of September 16, 2009, made by and between FFB and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

(b) Note Purchase Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Note Purchase Agreement dated as of even date herewith, made by and among FFB, the Borrower, and the Secretary (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Note Purchase Agreement").

3. **Advances; Advance Requests; Last Day for Advances.**

(a) Subject to the terms and conditions of the Note Purchase Agreement, FFB shall make Advances under this Note in the amounts, at the times, and to the accounts requested by the Borrower from time to time, in each case upon delivery to FFB of a written request by the Borrower for an Advance under this Note, in the form of request attached to the Note Purchase Agreement as Exhibit A thereto (each such request being an "Advance Request"), completed as prescribed in the Note Purchase Agreement.

(b) To be effective, an Advance Request must first be delivered to the Department of Energy for approval and be approved by or on behalf of the Secretary in writing, and such Advance Request, together with written notification of the Secretary's approval thereof, must be received by FFB on or before the third Business Day before the particular calendar date specified in such Advance Request that the Borrower requests to be the date on which the respective Advance is to be made.

(c) The Borrower hereby agrees that FFB, for its purposes, may consider any Advance Request approved by or on behalf of the Secretary and delivered to FFB in accordance with the terms of the Note Purchase Agreement to be an accurate representation of the Borrower's request for an Advance under this Note and the Secretary's approval of that Advance Request.

4. **Principal Amount of Advances; Maximum Principal Amount.**

The principal amount of each Advance shall be the amount specified in the respective Advance Request; provided, however, that the aggregate principal amount of all Advances made under this Note may not exceed the particular amount specified on page 1 of this Note as the "Maximum Principal Amount."

5. **Maturity Date.**

This Note, and each Advance made hereunder, shall mature on the particular date specified on page 1 of this Note as the "Maturity Date" (such date being the "Maturity Date").

6. **Computation of Interest on Each Advance.**

(a) Subject to paragraphs 11 and 14 of this Note, interest on the outstanding principal of each Advance shall accrue from the date on which the respective Advance is made to the date on which such principal is due.

(b) Interest on each Advance shall be computed on the basis of (1) actual days elapsed from (but not including) the date on which the respective Advance is made (for the first payment of interest due under this Note for the respective Advance) or the date on which the payment of interest was last due (for all other payments of interest due under this Note for the respective Advance), to (and including) the date on which payment is next due, and (2) a year of 365 days.

(c) The interest rate applicable to each Advance shall be established by FFB at the time that the respective Advance is made on the basis of the determination made by the Secretary of the Treasury pursuant to section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended (the "Program Authority"); provided, however, that the shortest maturity used as the basis for any basic interest rate determination shall be the remaining maturity of the most recently auctioned United States Treasury bills having the shortest maturity of all United States Treasury bills then being regularly auctioned.

7. **Payment of Interest; Payment Dates.**

Interest accrued on the outstanding principal balance of each Advance shall be due and payable on each of the particular

dates specified on page 1 of this Note as "Payment Dates" (each such date being a "Payment Date"), beginning on the first Payment Date to occur after the date on which such Advance is made, up through and including the Maturity Date.

8. Payment of Principal.

(a) The principal amount of each Advance shall be payable in installments, which payments shall be due beginning on the particular date specified as the "First Principal Payment Date" on page 1 of this Note (such date being the "First Principal Payment Date"), and shall be due on each Payment Date to occur thereafter until the principal of the respective Advance is repaid in full on or before the Maturity Date; provided, however, that with respect to each Advance that is made after the First Principal Payment Date, principal installments shall be due beginning on the second Payment Date to occur after the date on which the respective Advance is made.

(b) With respect to each Advance, the amount of principal due on the First Principal Payment Date, on each Payment Date to occur thereafter, and on the Maturity Date shall be, in each case, substantially equal to the amount of every other quarterly installment of principal and shall be sufficient, when added to all other such quarterly installments of equal principal, to repay the principal amount of the respective Advance in full on the Maturity Date.

9. Business Days.

(a) Whenever any Payment Date or the Maturity Date shall fall on a day on which either FFB or the Federal Reserve Bank of New York is not open for business, the payment which would otherwise be due on such Payment Date or the Maturity Date shall be due on the first day thereafter on which FFB and the Federal Reserve Bank of New York are both open for business (any such day being a "Business Day").

(b) In the case of a Payment Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on such Payment Date shall (1) be taken into account in establishing the interest rate for each Advance, and (2) be included in computing interest due in connection with such payment and excluded in computing interest due in connection with the next payment.

(c) In the case of the Maturity Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on the Maturity Date shall (1) be taken into account in establishing the interest rate for each Advance, and (2) be included in computing interest due in connection with such payment.

10. Manner of Making Payments.

(a) For so long as FFB is the Holder of this Note, each payment under this Note shall be paid in immediately available funds by electronic funds transfer to the account of the United States Treasury (for credit to the subaccount of FFB) maintained at the Federal Reserve Bank of New York specified by FFB in a written notice to the Borrower, or to such other account as may be specified from time to time by FFB in a written notice to the Borrower.

(b) In the event that FFB is *not* the Holder of this Note, then each payment under this Note shall be made in immediately available funds by electronic funds transfer to such account as shall be specified by the Holder in a written notice to the Borrower.

11. Late Payments.

(a) In the event that any payment of any amount owing under this Note is not made when and as due (any such amount being then an "Overdue Amount"), then the amount payable shall be such Overdue Amount plus interest thereon (such interest being the "Late Charge") computed in accordance with this subparagraph (a):

(1) The Late Charge shall accrue from the scheduled date of payment for the Overdue Amount (taking into account paragraph 9 of this Note) to the date on which payment is made.

(2) The Late Charge shall be computed on the basis of (A) actual days elapsed from (but not including) the scheduled date of payment for such Overdue Amount (taking into account paragraph 9 of this Note) to (and including) the date on which payment is made, and (B) a year of 365 days.

(3) The Late Charge shall accrue at a rate (the "Late Charge Rate") equal to one and one-half times the rate to be

determined by the Secretary of the Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury bills.

(4) The initial Late Charge Rate shall be in effect until the earlier to occur of either (A) the date on which payment of the Overdue Amount and the amount of the accrued Late Charge is made, or (B) the first Payment Date to occur after the scheduled date of payment for such Overdue Amount. In the event that the Overdue Amount and the amount of the accrued Late Charge are not paid on or before the such Payment Date, then the amount payable shall be the sum of the Overdue Amount and the amount of the accrued Late Charge, plus a Late Charge on such sum accruing at a new Late Charge Rate to be then determined in accordance with the principles of clause (3) of this subparagraph (a). For so long as any Overdue Amount remains unpaid, the Late Charge Rate shall be re-determined in accordance with the principles of clause (3) of this subparagraph (a) on each Payment Date to occur thereafter, and shall be applied to the Overdue Amount and all amounts of the accrued Late Charge to the date on which payment of the Overdue Amount and all amounts of the accrued Late Charge is made.

(b) Nothing in subparagraph (a) of this paragraph 11 shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder, modify, extend, alter or affect in any manner whatsoever (except as explicitly provided herein) the right of the Holder to receive any and all payments on account of this Note on the dates specified in this Note.

12. Final Due Date.

Notwithstanding anything in this Note to the contrary, all amounts outstanding under this Note remaining unpaid as of the Maturity Date shall be due and payable on the Maturity Date.

13. Application of Payments.

Each payment made on this Note shall be applied first to the payment of Late Charges (if any) payable under paragraphs 11 and 15 of this Note, then to the payment of premiums (if any) payable under paragraph 14 of this Note, then to the payment of accrued interest, then on account of outstanding principal of this Note.

14. Prepayments.

(a) The Borrower may elect to prepay all or any portion of the outstanding principal amount of any Advance made under this Note, or to prepay this Note in its entirety, in the manner, at the price, and subject to the limitations specified in this paragraph 14 (each such election being a "Prepayment Election").

(b) The Borrower shall deliver to FFB (and if FFB is not the Holder, then also to the Holder) written notification of each Prepayment Election (each such notification being a "Prepayment Election Notice"), specifying:

(1) the Advance Identifier that FFB assigned to the respective Advance (as provided in the Note Purchase Agreement);

(2) the particular date on which the Borrower intends to prepay the respective Advance (such date being the "Intended Prepayment Date" for the respective Advance), which date must be a Business Day; and

(3) the amount of principal of the respective Advance that the Borrower intends to prepay, which amount may be either:

(A) the total outstanding principal amount of such Advance; or

(B) an amount less than the total outstanding principal amount of such Advance (any such amount being a "Portion").

(c) To be effective, a Prepayment Election Notice must be received by FFB (and if FFB is not the Holder, then also by the Holder) on or before the fifth Business Day before the date specified therein as the Intended Prepayment Date for the respective Advance or Portion.

(d) The Borrower shall pay to the Holder a price for the prepayment of any Advance or Portion (such price being the "Prepayment Price" for such Advance or Portion) determined as follows:

(1) in the event that the Borrower elects to prepay the entire outstanding principal amount of any Advance, then the

Borrower shall pay to the Holder a Prepayment Price for such Advance equal to the sum of:

(A) the price for such Advance that would, if such Advance (including all unpaid interest accrued thereon through the Intended Prepayment Date) were purchased by a third party and held to the Maturity Date, produce a yield to the third-party purchaser for the period from the date of purchase to the Maturity Date substantially equal to the interest rate that would be set on a loan from the Secretary of the Treasury to FFB to purchase an obligation having a payment schedule identical to the payment schedule of such Advance for the period from the Intended Prepayment Date to the Maturity Date; and

(B) all unpaid Late Charges (if any) accrued on such Advance through the Intended Prepayment Date;

(2) in the event that the Borrower elects to prepay a Portion of any Advance, then the Borrower shall pay to the Holder a Prepayment Price for such Portion that would equal such Portion's pro rata share of the Prepayment Price that would be required for a prepayment of the entire principal amount of such Advance (determined in accordance with the principles of clause (1) of this subparagraph (d)); and

(3) in the event that the Borrower elects to prepay this Note in its entirety, then the Borrower shall pay to the Holder an amount equal to the sum of the Prepayment Prices for all outstanding Advances (determined in accordance with the principles of clause (1) of this subparagraph (d)).

The price described in subclause (A) of clause (1) of this subparagraph (d) shall be calculated by the Secretary of the Treasury as of the close of business on the second Business Day before the Intended Prepayment Date, using standard calculation methods of the United States Department of the Treasury. FFB shall deliver by facsimile transmission (fax) to the Borrower a written notice by 12:00 noon (Washington, DC, time) on the Business Day immediately preceding the Intended Prepayment Date specifying the Prepayment Price for the Advance or Portion and setting out separately principal, accrued interest, premium (if any), and Late Charges (if any); provided, however, that failure on the part of FFB to deliver any notice of the Prepayment Price

by 12:00 noon (Washington, DC, time) or failure on the part of the Borrower to receive any notice of the Prepayment Price shall not relieve the Borrower of the payment obligation described in subparagraph (e) of this paragraph 14, but rather shall give rise to a responsibility on the part of the Borrower to make inquiry to FFB for the Purchase Price.

(e) Payment of the Prepayment Price for any Advance or any Portion shall be due to the Holder before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date for such Advance or Portion.

(f) Each prepayment of a Portion shall, as to the principal amount of such Portion, be subject to a minimum amount equal to $100,000.00 of principal; except that the minimum principal amount limitation shall not apply to a prepayment of a Portion if:

(1) the prepayment is made to satisfy the Borrower's obligation to make a mandatory prepayment under the "Security Instruments" (as that term is defined in paragraph 19 of this Note); and

(2) the Borrower has certified to that fact in the respective Prepayment Election Notice.

(g) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the Prepayment Price paid for such Portion will be applied as provided in paragraph 13 of this Note, and, with respect to application to outstanding principal, such Prepayment Price shall be applied to principal installments in the inverse order of maturity.

(h) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the outstanding principal amount of such Advance, from and after such partial prepayment, shall be due and payable in accordance with this subparagraph (h).

(1) The amount of the quarterly principal installments that will be due after such partial prepayment shall be equal to the quarterly installments of equal principal that were due in accordance with the level principal repayment schedule that applied to such Advance immediately before such partial prepayment.

(2) The equal payments of principal shall be due beginning on the first Payment Date to occur after such partial prepayment, and shall be due on each Payment Date to occur thereafter up through and including the date on which the entire principal amount of such Advance and all unpaid interest (and Late Charges, if any) accrued thereon, are paid.

15. Rescission of Prepayment Elections; Late Charges for Late Payments of Prepayment Prices.

(a) The Borrower may rescind any Prepayment Election made in accordance with paragraph 14 of this Note, but only in accordance with this paragraph 15.

(b) The Borrower shall deliver to FFB written notification of each rescission of a Prepayment Election (each such notification being an "Election Rescission Notice") specifying the particular Advance for which the Borrower wishes to rescind such Prepayment Election, which specification must make reference to the particular "Advance Identifier" (as that term is defined in the Note Purchase Agreement) that FFB assigned to such Advance (as provided in the Note Purchase Agreement). The Election Rescission Notice may be delivered by facsimile transmission to FFB at (202) 622-0707 or at such other facsimile number or numbers as FFB may from time to time communicate to the Borrower.

(c) To be effective, an Election Rescission Notice must be received by FFB not later than 3:30 p.m. (Washington, DC, time) on the second Business Day before the Intended Prepayment Date.

(d) In the event that the Borrower (1) makes a Prepayment Election in accordance with paragraph 14 of this Note, (2) does not rescind such Prepayment Election in accordance with this paragraph 15, and (3) does not, before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date, pay to FFB the Prepayment Price described in paragraph 14(d) of this Note, then a Late Charge shall accrue on any such unpaid amount from the Intended Prepayment Date to the date on which payment is made, computed in accordance with the principles of paragraph 11 of this Note.

16. Amendments to Note.

To the extent not inconsistent with applicable law, this Note shall be subject to modification by such amendments,

extensions, and renewals as may be agreed upon from time to time by the Holder and the Borrower, with the approval of the Secretary.

17. **Certain Waivers.**

The Borrower hereby waives any requirement for presentment, protest, or other demand or notice with respect to this Note.

18. **Effective Until Paid.**

Except as provided in section 6.2 of the Note Purchase Agreement, this Note shall continue in full force and effect until all amounts due and payable hereunder have been paid in full.

19. **Security Instruments; Secretary as "Holder" of Note for Purposes of the Security Instruments.**

This Note is one of the notes permitted to be executed and delivered by, and is entitled to the benefits and security of, the particular security instruments specified on page 1 of this Note (such security instruments, as they may have heretofore been, and as they may hereafter be, amended, supplemented, restated, or consolidated from time to time in accordance with its or their terms, being, collectively, the "Security Instruments"), whereby the Borrower pledged and granted a security interest in certain property of the Borrower, described therein, to secure the payment and performance of certain obligations owed to the Secretary and any other Holder of this Note or participation share hereof, as set forth in the Security Instruments. For purposes of the Security Instruments, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase Agreement, and the affirmation by the Secretary dated as of even date herewith, delivered by the Secretary to FFB as provided in the Note Purchase Agreement (the "Secretary's Affirmation"), the Secretary shall be considered to be, and shall have the rights, powers, privileges, and remedies of, the Holder of this Note.

20. **Default and Enforcement.**

In case of a default by the Borrower under this Note or the occurrence of an event of default under the Security Instruments, then, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase

Agreement, and the Secretary's Affirmation, the Secretary, in his own name, shall have all rights, powers, privileges, and remedies of the Holder of this Note, in accordance with the terms of this Note and the Security Instruments, including, without limitation, the right to enforce or collect all or any part of the obligation of the Borrower under this Note or arising as a result of the Secretary's Affirmation, to file proofs of claim or any other document in any bankruptcy, insolvency, or other judicial proceeding, and to vote such proofs of claim.

21. Acceleration.

The entire unpaid principal amount of this Note, and all interest thereon, may be declared, and upon such declaration shall become, due and payable to the Secretary, under the circumstances described, and in the manner and with the effect provided, in the Security Instruments.

22. Governing Law.

This Note shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed in its corporate name and its corporate seal to be hereunder affixed and attested by its officers thereunto duly authorized, all as of the day and year first above written.

TESLA MOTORS, INC.

BY:

Signature: _____

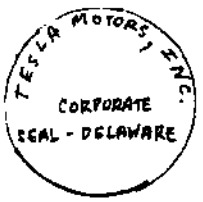
Name: Deepak Ahuja

Title: Chief Financial Officer

ATTEST:

Signature: _____

(SEAL)



Print Name: CRAIG W. HARDING

Title: Assistant Secretary

SCHEDULE 1
Security Instruments

1. Loan Arrangement and Reimbursement Agreement, between Tesla Motors, Inc. and the United States Department of Energy (the "Arrangement Agreement");

2. Collateral Trust Agreement among Tesla Motors, Inc., each Guarantor (as defined in the Arrangement Agreement), and Midland Loan Services, Inc., as collateral trustee;

3. Pledge and Security Agreement among Tesla Motors, Inc., each Guarantor (as defined in the Arrangement Agreement) and Midland Loan Services, Inc., as collateral trustee;

4. Guarantee by Tesla Motors New York LLC and any other Subsidiaries of Borrower that become a Guarantor thereunder in favor of the United States Department of Energy, FFB and each other holder from time to time of the Notes;

5. Notice of Grant of Security Interest in Patents made by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., as collateral trustee;

6. Notice of Grant of Security Interest in Trademarks made by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., as collateral trustee;

7. Deposit Account Control Agreement among Tesla Motors, Inc., City National Bank and Midland Loan Services, Inc., as collateral trustee;

8. Restricted Account and Securities Account Control Agreement among Tesla Motors, Inc., Wells Fargo Bank, National Association and Midland Loan Services, Inc., as collateral trustee;

9. Securities Account Consent - Control Agreement among Tesla Motors, Inc., Wells Fargo Securities, LLC and Midland Loan Services, Inc., as collateral trustee

10. Deposit Account Control Agreement among Tesla Motors, Inc., HSBC Bank USA, National Association and Midland Loan Services, Inc., as collateral trustee;

11. Blocked Account Control Agreement (Dedicated Account) among Tesla Motors, Inc., PNC Bank, N.A. and Midland Loan Services, Inc., as collateral trustee;

12. Blocked Account Control Agreement (Initial Debt Service Account) among Tesla Motors, Inc., PNC Bank, N.A. and Midland Loan Services, Inc., as collateral trustee;

13. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors GmbH and Midland Loan Services, Inc., as collateral trustee;

14. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors Taiwan Limited and Midland Loan Services, Inc., as collateral trustee;

15. Uncertificated Securities Control Agreement among Tesla Motors, Inc., Tesla Motors S.A.R.L. and Midland Loan Services, Inc., as collateral trustee;

16. Collateral Access Agreement among The Board of Trustees of the Leland Stanford Junior University, the United States Department of Energy and Tesla Motors, Inc.;

17. Intercompany Subordination Agreement among Tesla Motors, Inc., each Guarantor, and Midland Loan Services, Inc., as collateral trustee; and

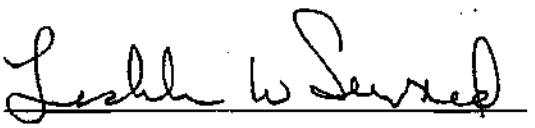
18. Each other security document delivered to the United States Department of Energy and/or the Collateral Trustee granting a Lien (as defined in the Arrangement Agreement) on any property of any person to secure the Secured Obligations (as defined in the Arrangement Agreement), including the obligations of Tesla Motors, Inc. under Note S.

SECRETARY'S AFFIRMATION

The Secretary of Energy (the "Secretary"), hereby affirms to the Federal Financing Bank, its successors and assigns ("FFB"), that consistent with section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended, including without limitation as amended by section 129(c) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578), the reimbursement obligations of the Secretary under section 6.3 of the Program Financing Agreement dated as of September 16, 2009, between FFB and the Secretary with respect to all payments of principal, interest, premium (if any), and late charges (if any), when and as due in accordance with the terms of each note identified on Schedule I hereto issued by **TESLA MOTORS, INC.** (the "Borrower") payable to FFB in the aggregate maximum principal amount of $465,047,000, (such notes being, collectively, the "Notes"), have the full faith and credit of the United States Government, with interest on the principal until paid, irrespective of (i) acceleration of such payments under the terms of any of the Notes, or (ii) receipt by the Secretary of any sums or property from its enforcement of its remedies for the Borrower's default.

This Secretary's Affirmation is issued pursuant to the Note Purchase Agreement dated as of January 20, 2010, among FFB, the Borrower, and the Secretary.

SECRETARY OF ENERGY
acting through his or her
duly authorized designate

By: 

Name: Lachlan W. Seward

Title: Director
Advance Technology Vehicles
Manufacturing Loan Program

Date: January 20, 2010

SCHEDULE I
To
SECRETARY'S AFFIRMATION

	Note Issue Date	Maximum Principal Amount
Note P	January 20, 2010	$101,186,000
Note S	January 20, 2010	$363,861,000

Department of Energy
Washington, DC 20585

January 20, 2010

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Sirs:

As the Deputy General Counsel of the Department of Energy (the "Department"), I am familiar with the Secretary's Affirmation dated as of January 20, 2010 (the "Secretary's Affirmation") issued by the Secretary of Energy (the "Secretary") relating to the two Future Advance Promissory Notes, both dated as of January 20, 2010, issued by Tesla Motors, Inc. (the "Borrower"), both payable to the Federal Financing Bank ("FFB"), one in the maximum principal amount of $101,186,000, and the other in the maximum principal amount of $363,861,000.

For purposes of rendering this opinion, I (or members of my staff) have reviewed: (i) section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended, including without limitation as amended by section 129(c) of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578) ("Section 136") and the regulations promulgated thereunder, (ii) the executed original of the Secretary's Affirmation and (iii) the originals, or copies certified or otherwise identified to our satisfaction, of such other agreements, instruments, certificates, records, and other documents as in my judgment are necessary or appropriate to enable me to render the opinion expressed below.

This opinion is delivered to you pursuant to section 3.3.2 of the Note Purchase Agreement, dated as of January 20, 2010, by and among FFB, the Borrower and the Secretary.

Based on the foregoing and upon such further investigation as I have deemed necessary, I am of the opinion that:

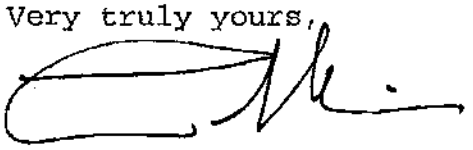
1. The execution and delivery of the Secretary's Affirmation on behalf of the Secretary, the consummation by the Department of the transactions contemplated thereby, and the

performance by the Department of the Secretary's obligations thereunder are authorized by applicable law.

2. The Secretary's Affirmation has been executed and delivered by an official of the Department who is duly authorized to execute and deliver such document on behalf of the Secretary.

3. As provided explicitly in paragraph (d)(1) of Section 136, loans made through FFB in accordance therewith shall have the full faith and credit the United States Government on the principal and interest.

Very truly yours,



Eric J. Fygi
Deputy General Counsel

SECRETARY'S CERTIFICATE

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Reference is made to:

(a) the Program Financing Agreement dated as of September 16, 2009, made by and between the Federal Financing Bank ("FFB") and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement");

(b) the Note Purchase Agreement dated as of January 20, 2010 (the "Note Purchase Agreement), made by and among FFB, Tesla Motors Inc. (the "Borrower"), and the Secretary;

(c) the Future Advance Promissory Note dated as of January 20, 2010, issued by the Borrower payable to FFB in the maximum principal amount of $101,186,000 ("Note P"); and

(d) the Future Advance Promissory Note dated as of January 20, 2010, issued by the Borrower payable to FFB in the maximum principal amount of $363,861,000 ("Note S"; and Note P and Note S being, collectively, the "Notes").

Pursuant to section 3.3.1(c) of the Note Purchase Agreement, the undersigned hereby certifies the following:

1. I am the Director, Advanced Technology Vehicles Manufacturing Loan Program.

2. I have been given the authority to execute this Certificate on behalf of the Secretary, and to deliver it to FFB, and that this authority is valid and in full force and effect as of the date hereof.

3. I am furnishing this certificate to FFB with the intent that it be relied upon by FFB as a basis for taking or withholding action under the Note Purchase Agreement.

4. As the duly authorized designate of the Secretary for these purposes, I have duly executed on behalf of the Secretary an affirmation dated January 20, 2010 (the "Secretary's Affirmation"), relating to the Notes.

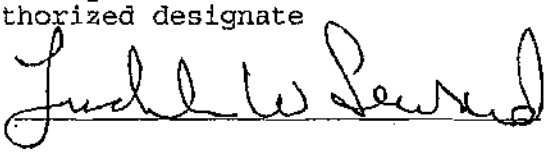
5. The executed Secretary's Affirmation conforms exactly to the form of "Secretary's Affirmation" prescribed in the Note Purchase Agreement.

6. The Department of Energy, as compliance agent for FFB under the Program Financing Agreement, has received from the Borrower both the certifications regarding lobbying that is required to be filed by recipients of federal loans, in the form of certificate set forth in Appendix A to 31 C.F.R. Part 21 and, if required under 31 C.F.R. Part 21, the disclosure forms to report lobbying, in the form of disclosure form set forth in Appendix B to 31 C.F.R. Part 21. The Department of Energy Office of Advanced Technology Vehicles Manufacturing Loan Program retains custody of the executed original certificates (and, if applicable, disclosure forms) as agent for FFB under the terms of the Program Financing Agreement, subject to delivery of actual possession of the original certificate (and, if applicable, disclosure form) to FFB or its designate upon request by FFB or its designate.

7. The Borrower has certified to the Department of Energy that the Borrower does not have a judgment lien against any of its property for a debt owed to the United States of America and that the Borrower does not have an outstanding debt (other than a debt under the Internal Revenue Code of 1986) owed to the United States of America or any agency thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R. § 285.13(d).

IN WITNESS WHEREOF, the undersigned has executed this Certificate and caused it to be delivered to FFB.

SECRETARY OF ENERGY
acting through his or her
duly authorized designate

By: 

Name: Lachlan W. Seward

Title: Director
Advance Technology Vehicles
Manufacturing Loan Program

Date: January 20, 2010

DESIGNATION NOTICE

NOTICE TO:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

Attention: Deepak Ahuja
Chief Financial Officer

Reference is made to the Program Financing Agreement dated as of September 16, 2009, between the Federal Financing Bank ("FFB") and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to such terms in the Program Financing Agreement.

Pursuant to article 2 of the Program Financing Agreement, the Secretary hereby notifies FFB and the entity identified below that the Secretary has designated that entity to be a "Borrower" for purposes of the Program Financing Agreement (such entity being referred to herein as the "Borrower"):

(a) The proper legal corporate name of the Borrower is as follows:

Tesla Motors, Inc.

(b) The address of the Borrower for purposes of the delivery of written notices and other communications is as follows:

1050 Bing Street
San Carlos, CA 94070

(c) The name, title, telephone number, and facsimile number of an official of such Borrower to whom notices and other communications are to be delivered or made is as follows:

Deepak Ahuja
Chief Financial Officer

Telephone No.: **(650) 701-2690**
Facsimile No.: **(650) 701-2613**
Email Address: **deepak@teslamotors.com**

Subject to the provisions of the Program Financing Agreement, this designation: (a) commits FFB to enter into a Note Purchase Agreement with the Borrower and the Secretary setting forth the terms and conditions under which FFB will purchase one or more notes issued by the Borrower in the aggregate maximum principal amount specified herein; (b) commits the Secretary to issue the Secretary's Affirmation respecting such note or notes; and (c) commits FFB to purchase such note or notes when the terms and conditions specified in the respective Note Purchase Agreement have been satisfied.

The Secretary hereby specifies the following information to be used for the preparation of the Note Purchase Agreement and the note or notes that is or are to be issued by the Borrower and offered to FFB for purchase (such note or notes being the "Note" or "Notes," as the case may be):

(d) the aggregate maximum principal amount of the loan to be committed to the Borrower (which amount is also to be the aggregate maximum principal amount of the Note or Notes that is or are to be issued by the Borrower and offered to FFB for purchase) as follows:

Aggregate maximum principal amount of the loan:

$465,047,000

Maximum principal amount of Note P:

$101,186,000

Maximum principal amount of Note S:

$363,861,000

(e) the state of incorporation of the Borrower is as follows:

Delaware

(f) the titles of all security instruments securing the loan to be made to the Borrower is as follows:

1. LOAN ARRANGEMENT AND REIMBURSEMENT AGREEMENT, between the Borrower and the United States Department of Energy (the "Department of Energy"), dated as of January 20, 2010 (the "Arrangement Agreement");

2. COLLATERAL TRUST AGREEMENT dated as of January 20, 2010, among the Borrower, certain of its subsidiaries parties thereto, and the Collateral Trustee;

3. PLEDGE AND SECURITY AGREEMENT dated as of January 20, 2010, made by the Borrower and any of its Subsidiaries that becomes a Grantor thereunder in favor of Midland Loan Services, Inc., as collateral trustee (the "Collateral Trustee");

4. GUARANTEE dated as of January 20, 2010 made by Tesla Motors New York LLC and any other Subsidiaries of Borrower that become a Guarantor thereunder in favor of the Department of Energy, FFB and each other holder from time to time of the Notes,;

5. NOTICE OF GRANT OF SECURITY INTEREST IN PATENTS effective January 20, 2010, made by and among the Borrower and certain of its subsidiaries parties thereto in favor of the Collateral Trustee under the Collateral Trust

Agreement;

6. NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS dated January 20, 2010, made by and among the Borrower and certain of its subsidiaries parties thereto in favor of the Collateral Trustee;

7. DEPOSIT ACCOUNT CONTROL AGREEMENT dated January 20, 2010, among the Borrower, the Collateral Trustee and City National Bank, as deposit bank;

8. RESTRICTED ACCOUNT AND SECURITIES ACCOUNT CONTROL AGREEMENT dated January 20, 2010, among the Borrower, the Collateral Trustee and Wells Fargo Bank, National Association, as deposit bank;

9. Securities Account Control - Consent Agreement dated January 20, 2010, among the Borrower, the Collateral Trustee and Wells Fargo Securities, LLC, as securities intermediary.

10. DEPOSIT ACCOUNT CONTROL AGREEMENT dated January 20, 2010, among the Borrower, the Collateral Trustee and HSBC Bank USA, National Association, as deposit bank;

11. BLOCKED ACCOUNT CONTROL AGREEMENT (Dedicated Account) dated January 20, 2010, among the Borrower, the Collateral Trustee and PNC Bank, National Association, as deposit bank;

12. BLOCKED ACCOUNT CONTROL AGREEMENT (Initial Debt Service Reserve Account) dated January 20, 2010, among the Borrower, the Collateral Trustee and PNC Bank, National Association, as deposit bank;

13. UNCERTIFICATED SECURITIES CONTROL AGREEMENT dated January 20, 2010, among Tesla Motors, Inc., Tesla Motors GmbH and the Collateral Trustee;

14. **UNCERTIFICATED SECURITIES CONTROL AGREEMENT dated January 20, 2010, among Tesla Motors, Inc., Tesla Motors Taiwan Limited and the Collateral Trustee;**

15. **UNCERTIFICATED SECURITIES CONTROL AGREEMENT dated January 20, 2010, among Tesla Motors, Inc., Tesla Motors S.A.R.L. and the Collateral Trustee;**

16. **COLLATERAL ACCESS AGREEMENT dated January 20, 2010, among Tesla Motors, Inc., The Board of Trustees of the Leland Stanford Junior University and the Department of Energy;**

17. **INTERCOMPANY SUBORDINATION AGREEMENT dated January 20, 2010, among Tesla Motors, Inc., each guarantor party thereto, and the Collateral Trustee; and**

18. **Each other security document delivered to the Department of Energy and/or the Collateral Trustee granting a Lien (as defined in the Arrangement Agreement) on any property of any person to secure the Secured Obligations (as defined in the Arrangement Agreement).**

(g) the last day on which an Advance may be made under each Note is as follows:

for Note P:

January 22, 2013

for Note S:

January 22, 2013

(h) the date on which each Note and all Advances made under each Note are to mature (such date being the "Maturity Date") is as follows:

for Note P:

_____September 15, 2019

for Note S:

September 15, 2022

(i) interest accrued on the outstanding principal balance of each Advance shall be due and payable on a quarterly basis;

the particular quarterly dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other three of which must be the particular calendar dates in each year that are at three-month intervals from such date (each of such dates being a "Payment Date"), are as follows:

March, June, September,
and **December 15** of each year.

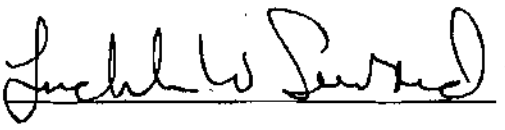
(j) the date on which the first installment of principal is to be payable on such Note, which must be a Payment Date, is as follows:

___ **December 15, 2012.**

The undersigned certifies that the undersigned has been authorized to execute this Designation Notice on behalf of the Secretary and to deliver it to FFB and the Borrower, and that this authority is valid and in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Designation Notice and caused it to be delivered to FFB and the Borrower.

SECRETARY OF ENERGY
acting through his or her
duly authorized designate

Signature: 

Name: Lachlan W. Seward

Title: Director, Advanced
Technology Vehicles
Manufacturing Loan Program

Date: January 20, 2010

WSGR Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

650 Page Mill Road
Palo Alto, CA 94304-1050
PHONE 650.493.9300
FAX 650.493.6811
www.wsgr.com

January 20, 2010

Federal Financing Bank
Federal Financing Bank Main Treasury Building
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Re: **Note Purchase Agreement, made as of January 20, 2010, by and among Federal Financing Bank, Tesla Motors, Inc.and the Secretary of Energy, acting through the United States Department of Energy, an agency of the United States of America**

Ladies and Gentlemen:

We have acted as special counsel to Tesla Motors, Inc., a Delaware corporation ("**Borrower**"), in connection with the execution and delivery of the Note Purchase Agreement, made as of January 20, 2010 (the "**Note Purchase Agreement**"), by and among Federal Financing Bank ("**FFB**"), the Borrower and the Secretary of Energy, acting through the United States Department of Energy, an agency of the United States of America. This opinion is rendered to you pursuant to Section 3.2.2 of the Note Purchase Agreement. All capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Note Purchase Agreement.

In rendering the opinions expressed below, we have examined executed originals or copies of the following documents:

(a) the Note Purchase Agreement;

(b) the Future Advance Promissory Note – Note P and the Future Advance Promissory Note – Note S, each dated as of the date hereof;

(c) the Certificate of Incorporation, certified by the Delaware Secretary of State, and Bylaws of Borrower, as amended to date;

(d) records of proceedings of the Board of Directors of Borrower during or by which resolutions were adopted relating to matters covered by this opinion;

(e) (i) a certificate of the Secretary of State of the State of Delaware, dated January 15, 2010, with respect to the standing of Borrower as a corporation incorporated under the laws of the State of Delaware, (ii) a certificate of the Secretary of State of the State of California, dated January 4, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of California, (iii) a certificate of the Secretary of State of the State of Colorado,

dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Colorado, (iv) a certificate of the Department of State of the State of Florida, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Florida, (v) a certificate of the Secretary of State of the State of Illinois, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Illinois, (vi) a certificate of the Secretary of State of the State of New York, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of New York, (vii) a certificate of the Secretary of State of the State of Washington, dated January 8, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Washington;

(f) the certificates of the Secretary and certain officers of Borrower as to certain factual matters;

(g) each of the judgments and decrees that are expressly identified on Schedule A hereto, if any (the "**Reviewed Judgments**"); and

(h) each of the agreements that would be listed as exhibits to the Borrower's Form S-1 if it were filed with the Securities and Exchange Commission on the date hereof, that would be included therein pursuant to the requirements of clauses (2), (4), (9) or (10) of Item 601(b) of Regulation S-K (other than those which have expired, terminated or are otherwise no longer in effect), which agreements are expressly identified on Schedule B hereto (the "**Reviewed Agreements**").

In addition, we have reviewed originals or copies of such corporate records of Borrower, certificates of public officials and such other documents that we consider necessary or advisable for the purpose of rendering the opinions and statements set forth below. We have not independently established the facts stated therein. The Note Purchase Agreement and the Note are sometimes referred to herein as the "**Transaction Documents**."

We have assumed the following for purposes of rendering the opinions set forth herein:

(i) The genuineness of all signatures, the authenticity and completeness of all documents submitted to us as originals and the conformity to original documents of all copies submitted to us.

(ii) That each party to any document that we have examined (other than Borrower in connection with the Transaction Documents) has satisfied those requirements that are

applicable to it to the extent necessary to make such document a valid and binding obligation of such party, enforceable against such party in accordance with its terms.

(iii) That (A) the representations and warranties as to factual matters made by the parties to the Transaction Documents and pursuant thereto are correct, (B) the representations and warranties made by officers of Borrower as to factual matters made in the certificates delivered in connection with the Transaction Documents are correct; and (C) the parties to the Transaction Documents have complied and will comply with their obligations under the Transaction Documents.

As used in the opinions or statements set forth below, the expressions "to our knowledge," "known to us" or similar language with reference to matters of fact refer to the current actual knowledge of the attorneys of this firm who have rendered legal services in connection with the representation described in the first paragraph of this opinion letter. Except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of any fact, and no inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of Borrower or the rendering of the opinions or statements set forth below.

On the basis of the foregoing and in reliance thereon, and based upon examination of such questions of law as we have deemed appropriate, and subject to the assumptions, exceptions, qualifications, and limitations set forth herein, we advise you that in our opinion:

1. Borrower is a corporation duly incorporated and validly existing under the laws of the State of Delaware and is in good standing under such laws. Borrower has requisite corporate power to carry on its business as currently conducted. Borrower is qualified to do business as a foreign corporation in the State of California, Colorado, Florida, Illinois, New York and Washington.

2. The Borrower has the corporate power to execute and deliver the Transaction Documents and to carry out and perform its obligations under the terms of the Transaction Documents.

3. All corporate action on the part of Borrower, its directors and shareholders necessary for the authorization, execution and delivery of the Transaction Documents by Borrower, and the performance by Borrower of its obligations under the Transaction Documents has been taken.

4. Each of the Transaction Documents has been duly and validly executed and delivered by Borrower and constitutes a valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.

5. The execution, delivery and performance by Borrower of the Transaction Documents do not (a) violate any provision of the Certificate of Incorporation or Bylaws of Borrower; (b) violate any applicable United States federal or New York state law, rule or regulation known to us to be customarily applicable to transactions of this nature; (c) violate any Reviewed Judgment; or (d) violate or constitute a default under any Reviewed Agreement.

6. No consent, approval or authorization of, and no designation, declaration or filing with, any governmental authority on the part of Borrower is required in connection with the valid execution, delivery or performance by Borrower of the Transaction Documents, except such that have been made or obtained.

The opinions set forth above are subject to the following exceptions, qualifications, limitations, comments and additional assumptions:

A. We express no opinion as to any matter relating to laws of any jurisdiction other than the federal laws of the United States of America, the General Corporation Law of the State of Delaware, and the laws of the State of New York, as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction or whether the laws of any particular jurisdiction govern any aspect of the Transaction Documents. As you know, we are not licensed to practice law in the State of Delaware and, accordingly, our opinions as to General Corporation Law of the State of Delaware are based solely on a review of the official statutes of the State of Delaware.

B. We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights of creditors generally, or (ii) the effect of general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, whether considered in a proceeding in equity or at law.

C. For purposes of our opinions in paragraph 4, we have assumed that a court would apply the laws of the State of New York. We express no opinion as to the governing law clause of any Transaction Document to the extent that it purports to choose the federal laws of the United States with respect to any matter not governed by such laws.

D. We express no opinion as to the enforceability of any provision of the Transaction Documents (i) purporting to waive broadly or vaguely stated rights, unknown future defenses, rights to damages, or the benefits of other statutory, regulatory or constitutional rights that cannot be waived or, if they can be waived, cannot be waived prospectively; or

(ii) prescribing or varying rules of evidence, method or quantum of proof or other legal standards in a manner contrary to applicable statutes and rules of law.

E. We express no opinion as to the enforceability of any provisions in the Transaction Documents (i) giving rights or remedies, or permitting the exercise of rights or remedies, in a manner not in compliance with applicable statutes and rules of law, (ii) providing that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to any other right or remedy, or that the election of some particular remedy does not preclude recourse to one or more other remedies, or (iii) providing for rights of set-off.

F. We express no opinion as to the applicability or effect of compliance or non-compliance by any lender (or its agent) with any state, federal or other laws applicable to such lender (or its agent) or to the transactions contemplated by the Transaction Documents because of the nature of its business, including its legal or regulatory status.

G. In rendering the opinions set forth in paragraph 1 as to due incorporation, valid existence, good standing and qualification to do business, we have relied solely upon documents and certificates referenced in paragraphs (c) and (e) above.

H. In rendering the opinion set forth in paragraph 5 above concerning violations of and defaults under Reviewed Agreements and violations of Reviewed Judgments, we have relied solely upon an examination of the Reviewed Agreements and Reviewed Judgments in the forms provided to us by Borrower. With regard to the opinion in paragraph 5 above concerning violations of and defaults under Reviewed Agreements, we have assumed that such Reviewed Agreements would be interpreted and enforced in accordance with their plain meaning. Our opinion in clause (b) of paragraph 5 above is intended to express our opinion that the execution and delivery by Borrower of the Transaction Documents, the undertaking of the covenants set forth in the Transaction Documents and the borrowing of Advances in accordance with the Note Purchase Agreement and the Note and repayment of any Advances by the Borrower will not result in a violation of any law, rule, regulation of the State of New York or United States federal law that a lawyer practicing in the State of New York exercising customary professional diligence would reasonably recognize to be applicable to Borrower and the transactions contemplated by the Transaction Documents. We express no opinion regarding compliance or non-compliance (or the effect thereof) with any federal or state securities laws.

I. This opinion speaks only at and as of its date and is based solely on the facts and circumstances known to us at and as of such date. We express no opinion as to the effect on any lender's (or its agent's) rights under the Transaction Documents of any statute,

rule, regulation or other law which is enacted or becomes effective after, or of any court decision which changes the law relevant to such rights which is rendered after, the date of this opinion or the conduct of the parties following the closing of the contemplated transaction. In addition, in rendering this opinion, we assume no obligation to revise or supplement this opinion should the present laws of the jurisdictions mentioned herein be changed by legislative action, judicial decision or otherwise.

* * *

We advise you that, to our knowledge, there are no lawsuits pending against Borrower that seek to challenge the enforceability of any of the Transaction Documents nor, to our knowledge, has Borrower received any written threat thereof. We note that we have not conducted a docket search in any jurisdiction with respect to lawsuits that may be pending against Borrower.

* * *

This opinion is made with the knowledge and understanding that you (but no other person) may rely thereon in entering into the Note Purchase Agreement and is solely for your benefit, and this opinion may not be disclosed to or relied upon by any person other than you.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Wilson Sonsini Goodrich & Rosati, P.C.

SCHEDULE A

Reviewed Judgments

None.

SCHEDULE B

Reviewed Agreements

1. Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, between Borrower and certain holders of Borrower's capital stock named therein

2. Offer Letter between Borrower and Elon Musk dated as of October 13, 2008

3. Offer Letter between Borrower and Deepak Ahuja dated as of June 13, 2008, and amended by that certain Letter Agreement dated as of on June 4, 2009

4. Relocation Agreement between Borrower and Deepak Ahuja dated as of October 31, 2008 and amended by that certain Letter Agreement dated as of June 4, 2009

5. Offer letter between Borrower and Jeffrey B. Straubel dated as of May 6, 2004

6. Offer letter between Borrower and Michael F. Donoughe dated as of June 4, 2008, and amended by that certain Letter Agreement dated as of December 10, 2008

7. Offer Letter between Borrower and John Walker dated as of August 17, 2009

8. Commercial Lease between Borrower and The Board of Trustees of The Leland Stanford Jr. University dated as of August 6, 2009

9. Commercial Single-Tenant Lease between Borrower and Russell A. and Deborah B. Margiotta, Trustees of the Margiotta Family Trust UTA May 26, 1981 dated as of June 7, 2005

10. Commercial Single-Tenant Lease between Borrower and James R. Hull dated as of August 16, 2006

11. Commercial Lease between Borrower and The Board of Trustees of The Leland Stanford Jr. University dated as of July 25, 2007

12. License Agreement between Borrower and MS Kearny Northrop Avenue, LLC dated as of July 23, 2009

13. Supply Agreement for Products and Services Based on Lotus Elise Technology between Lotus Cars Limited and Borrower dated as of July 11, 2005

14. Amendment No. 1 to Supply Agreement for Products and Services Based on Lotus Elise Technology between Lotus Cars Limited and Borrower dated as of August 4, 2009

15. Supply Agreement between Eberspacher (UK) Ltd. and Borrower dated as of September 1, 2006

16. Supply Agreement between Perei Group (UK) Ltd. and Borrower dated as of September 1, 2006

17. Supply Agreement between Burgaflex UK Ltd. and Borrower dated as of September 1, 2006

18. Supply Agreement by and among Sanyo Electric Co. Ltd. Mobile Energy Company, Sanyo Energy (USA) Corporation and Borrower dated as of February 1, 2007

19. Amendment No. 1 to Supply Agreement by and among Sanyo Electric Co. Ltd. Mobile Energy Company, Sanyo Energy (USA) Corporation and Borrower effective as of February 1, 2007

20. Supply Agreement by and between Taiway Ltd. and Borrower dated as of February 12, 2007

21. Supply Agreement between Chroma ATE Inc. and Borrower dated as of April 19, 2007

22. Supply Agreement between Polytec Holden Ltd. and Borrower dated as of April 13, 2007

23. Letter Agreement Re: Modification to Tesla Motors Terms & Conditions of Purchase between BorgWarner TorqTransfer Systems Inc. and Borrower dated as of September 22, 2008

24. ZEV Credits Agreement between American Honda Motor Co., Inc. and Borrower dated as of February 12, 2009

25. Addendum to ZEV Credits Agreement between American Honda Motor Co., Inc. and Borrower dated as of February 20, 2009

26. Supply Agreement by and among Panasonic Industrial Company, Panasonic Corporation, acting through Energy Company, and Borrower dated as of July 21, 2009

27. Development Contract between Borrower and Daimler AG dated as of May 1, 2009

28. Exclusivity and Intellectual Property Agreement between Daimler North America Corporation and Borrower dated as of May 11, 2009

29. Side Agreement between Borrower and Blackstar Investco LLC dated as of May 11, 2009

30. Letter Agreement Re: Restrictions on Share Transfer; Certain Voting Restrictions between the Elon Musk Revocable Trust dated July 22, 2003 and Blackstar Investco LLC, dated as of May 11, 2009

CERTIFICATE SPECIFYING AUTHORIZED BORROWER OFFICIALS

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Reference is made to the Note Purchase Agreement dated as of January 20, 2010, among the Federal Financing Bank ("FFB"), Tesla Motors, Inc. (the "Borrower"), and the Secretary of Energy (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Note Purchase Agreement").

Capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Note Purchase Agreement.

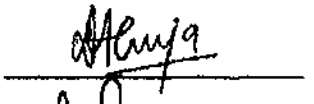
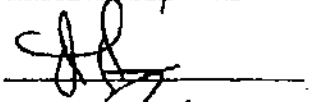
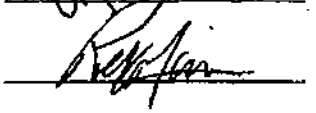
This Certificate Specifying Authorized Borrower Officials is delivered to FFB pursuant to section 3.2.3 of the Note Purchase Agreement.

The undersigned, on behalf of the Borrower, hereby certifies that:

a. each of the individuals named below is the duly qualified and incumbent official of the Borrower holding the position title set out opposite the respective individual's name;

b. each of the individuals named below is authorized to execute and deliver Advance Requests from time to time on behalf of the Borrower; and

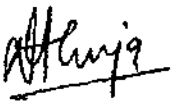
c. the signature of each such individual set out opposite the respective individual's name and title is the genuine signature of such individual:

Name	Title	Signature
Deepak Ahuja	Chief Financial Officer	
Mike Taylor	Vice President of Finance	
Rex Liu	Controller	

The undersigned certifies that the undersigned has been authorized to execute this Certificate Specifying Authorized Borrower Officials on behalf of the Borrower and to deliver it to FFB, and that this authority is valid and in full force and effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate Specifying Authorized Borrower Officials and caused it to be delivered to FFB.

TESLA MOTORS, INC.

Signature: 

Name: Deepak Ahuja

Title: Chief Financial Officer

Date: January 20, 2010

FEDERAL FINANCING BANK
WASHINGTON, D.C. 20220

PRINCIPAL INSTRUMENTS ACCEPTANCE NOTICE
ADVANCED TECHNOLOGY VEHICLE MANUFACTURING PROGRAM

Pursuant to section 5.1 of the Note Purchase Agreement dated as of January 20, 2010 (the "Agreement") among the Federal Financing Bank (the "FFB"), Tesla Motors, Inc. ("Tesla"), and the Secretary of Energy ("Energy"), the FFB hereby notifies the persons listed on Schedule I to this notice that the Future Advance Promissory Note P dated January 20, 2010, issued by Tesla and offered to the FFB for purchase under the Agreement meets the terms and conditions detailed in articles 3 and 4 of the Agreement.

The "Note Identifier" assigned to this Future Advance Promissory Note P, for use in all communications to FFB making reference to this Future Advance Promissory Note P, is as follows: **TESLA 0001**.

FEDERAL FINANCING BANK
Date for Purchase
of this Future Advance Promissory Note P is:
January 20, 2010

SCHEDULE I

Department of Energy
Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Phone: (202) 586-8146
Fax: (202) 586-7809

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Phone: (202) 586-5281
Fax: (202) 586-1499

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Deepak Ahuja, Chief Financial Officer
Phone: (650) 701-2690
Fax: (650) 701-2613
Email Address: Deepak@teslamotors.com

FEDERAL FINANCING BANK
WASHINGTON, D.C. 20220

PRINCIPAL INSTRUMENTS ACCEPTANCE NOTICE
ADVANCED TECHNOLOGY VEHICLE MANUFACTURING PROGRAM

Pursuant to section 5.1 of the Note Purchase Agreement dated as of January 20, 2010 (the "Agreement") among the Federal Financing Bank (the "FFB"), Tesla Motors, Inc. ("Tesla"), and the Secretary of Energy ("Energy"), the FFB hereby notifies the persons listed on Schedule I to this notice that the Future Advance Promissory Note S dated January 20, 2010, issued by Tesla and offered to the FFB for purchase under the Agreement meets the terms and conditions detailed in articles 3 and 4 of the Agreement.

The "Note Identifier" assigned to this Future Advance Promissory Note S, for use in all communications to FFB making reference to this Future Advance Promissory Note S, is as follows: **TESLA 0002.**

FEDERAL FINANCING BANK
Date for Purchase
of this Future Advance Promissory Note S is:
January 20, 2010

SCHEDULE I

Department of Energy
Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Phone: (202) 586-8146
Fax: (202) 586-7809

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Phone: (202) 586-5281
Fax: (202) 586-1499

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Deepak Ahuja, Chief Financial Officer
Phone: (650) 701-2690
Fax: (650) 701-2613
Email Address: Deepak@teslamotors.com

TESLA MOTORS, INC.
TESLA MOTORS NEW YORK LLC

FORMS SUPPLEMENT

January 20, 2010

To: The United States Department of Energy (the "DOE") with respect to that certain Loan Arrangement and Reimbursement Agreement, dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Arrangement Agreement"), by and between Tesla Motors, Inc., a Delaware corporation (the "Borrower"), and the DOE.

This Forms Supplement is being delivered to you pursuant to Section 5.1(w) of the Arrangement Agreement. The items set forth in the attached exhibits represent the forms of certain items to be delivered from time to time pursuant to the Arrangement Agreement as provided therein. Capitalized terms used herein (or in the attached exhibits) and defined in the Arrangement Agreement shall have the meanings ascribed in the Arrangement Agreement. This Forms Supplement may not be amended, modified or supplemented except in accordance with the terms of Section 12.1 of the Arrangement Agreement.

The following exhibits are included herein:

Exhibit A	Form of Advance Request
Exhibit B	Sample Project Forecast and Overrun Calculation
Exhibit C	Form of Compliance Certificate
Exhibit D	Form of CAEATFA Conveyance/Reconveyance Instrument
Exhibit E	Financial Covenant Examples

[Signatures follow]

IN WITNESS WHEREOF, the undersigned have executed this Forms Supplement as of the date hereof.

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

Exhibit A

FORM OF ADVANCE REQUEST

EXHIBIT A TO
FORMS SUPPLEMENT

FORM OF ADVANCE REQUEST[1]

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
[Facsimile: (202) 586-7809]
Email: teslaatvmtransaction@hq.doe.gov

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
[Facsimile: (202) 586-1499]
Email: teslaatvmtransaction@hq.doe.gov

[_____], 20[__]

We refer to the Loan Arrangement and Reimbursement Agreement (as amended, supplemented or modified from time to time, the "Arrangement Agreement") dated as of January 20, 2010 between Tesla Motors, Inc., a Delaware corporation (the "Borrower"), and the United States Department of Energy. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Arrangement Agreement.

The Borrower wishes to request Advances in the amounts set forth below (the "Requested Advances"). [Each such request for an Advance (other than any that has been identified below as a True-Up Advance) has been divided into a Current Request and a Deferred Request as set forth below.][2] The Borrower hereby gives notice pursuant to Section 2.3(a) of the Arrangement Agreement that it requests that DOE execute the Advance Request Approval Notices contained in each FFB Advance Request delivered herewith (the "Applicable FFB Advance Requests") requesting the Requested Advances

[1] Advance Request should be delivered by an Acceptable Delivery Method

[2] Insert if Section 2 12(f) requires such division as a result of amounts on deposit in the Applicable Subaccounts of the Dedicated Account

[(other than the Deferred Advances identified in paragraph 1 below)] under [the Note][the Notes] with FFB Note Identifier[s] _____ [and _____], and deliver such Advance Request Approval Notices to FFB. [In addition, the Borrower hereby requests DOE to countersign the Withdrawal Request delivered herewith requesting withdrawal from the Applicable Subaccounts of the Dedicated Account an aggregate amount equal to the aggregate amount of the Deferred Requests identified in paragraph 1 below (the "Requested Withdrawal Amount").][3]

In connection with such request, and pursuant to Section 5.3 [and Section 5.4][4] of the Arrangement Agreement, the undersigned [_____], the duly appointed [insert title of Responsible Officer] of the Borrower, in his or her capacity as such and not in his or her individual capacity, hereby certifies as follows:

1. [The Borrower hereby requests an Advance of $_____ under Note P.] [The Borrower hereby requests Advances in the following amounts and types under Note P:]

Current Request	$
Deferred Request	$
Interim True-Up Advance	$

[Final Completion of Project P has occurred and the Borrower hereby requests the Project P Final True-Up Advance of $_____ under Note P.][5]

2. [The Borrower hereby requests an Advance of $_____ under Note S.] [The Borrower hereby requests Advances in the following amounts and types under Note S:]

Current Request	$
Deferred Request	$

[3] Insert this last bracketed sentence if the Borrower wishes to request a withdrawal pursuant to Section 2.12(g).

[4] Insert if requesting the first Site Dependent Advance

[5] Use the first bracketed alternative if no division is required pursuant to Section 2.12(f). Use the second bracketed alternative, including the table that follows it, if such subdivision is required and/or if any Interim True-Up Advance is being requested. Use the third bracketed alternative if a Final True-Up Advance is being requested.

Interim True-Up Advance	$

[Final Completion of Project S has occurred and the Borrower hereby requests the Project S Final True-Up Advance of $_____ under Note S.] [6]

3. The Borrower requests [_____], 20[__] as the Requested Advance Date pursuant to the FFB Advance Request under Note P (attached as Exhibit A hereto).[7][8]

4. The Borrower requests [_____], 20[__] as the Requested Advance Date pursuant to the FFB Advance Request under Note S (attached as Exhibit B hereto).[9]

5. Annex I hereto sets forth the aggregate amount, on a prospective basis after giving effect to the Requested Advance[s], of (a) all Advances outstanding under Note P (if any), (b) all Advances outstanding under Note S (if any) and (c) all Borrower Project Payments made by the Borrower with respect to each Project. The aggregate amount requested with respect to clauses (a) and (b) above do not exceed the amount permitted pursuant to Sections 2.7 and 2.12 of the Arrangement Agreement. The aggregate Borrower Project Payments with respect to each Project are not less than the amounts required pursuant to Sections 2.8 and 5.3(j) of the Arrangement Agreement

6. Annex II hereto sets forth a summary which is true, complete and correct in all material respects of the Eligible Project Costs being financed with the proceeds of the Requested Advance[s], which summary sets forth the period during which such Eligible Project Costs were incurred, together with copies of invoices or other reasonable documentation evidencing such Project Costs (or

---

[6] Use the first bracketed alternative if no division is required pursuant to Section 2.12(f). Use the second bracketed alternative, including the table that follows it, if such subdivision is required and/or if any Interim True-Up Advance is being requested. Use the third bracketed alternative if a Final True-Up Advance is being requested.

[7] Pursuant to Sections 2.3(a) and 2.3(b)(ii), the Requested Advance Date shall be a Business Day at least ten (10) Business Days after the date DOE receives this Advance Request.

[8] To the extent that Advances under both Note P and Note S are being requested in a single Advance Request, the Requested Advance Date specified in Paragraphs 3 and 4 must be the same date, in accordance with the requirement under Section 2.3(a) which states that the Borrower may request Advances no more frequently than once per calendar month.

[9] See footnote 7 above.

alternatively in the case of such invoices, a listing thereof which sets forth, for each invoice, the invoice number, date, vendor and amount and the portion of such amount that relates to Eligible Project Costs, it being understood that the Borrower shall deliver to DOE copies of such invoices promptly upon DOE's request). Annex I sets forth a calculation in reasonable detail of any adjustments requested to be made to such Requested Advance relating to Eligible Progress Payments pursuant to Section 2.12(l) of the Arrangement Agreement. Annex I also includes (x) a breakdown of the allocation of such Project Costs (a) among any requested Site-Dependent and non-Site Dependent Advances and (b) among any Current Requests and Deferred Requests, as applicable and (y) an identification of any such Project Costs that are for equipment that has been the subject of a title transfer to CAEATFA together with a copy of the fully executed documentation required for the conveyance and reconveyance of title to such equipment pursuant to Section 9.5(q) of the Arrangement Agreement.

7. (i) The proceeds of the Requested Advances with respect to Project P will be used to pay or reimburse the Borrower for Eligible Project P Costs incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the Requested Advance Date and (ii) the proceeds of the Requested Advances with respect to Project S will be used to pay or reimburse the Borrower for Eligible Project S Costs incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the Requested Advance Date, in each case in accordance with the current Business Plan for the applicable Project.

8. [The most recent Project Forecasts previously delivered pursuant to Section 2.3(b)(vi), Section 5.1(m) or Section 8.2(b) of the Arrangement Agreement continue to be applicable, based on good faith estimates and assumptions made by management of the Borrower and management of the Borrower believes that such Project Forecasts are still reasonable and attainable.] [Attached hereto as Annex III are an updated Project P Forecast and an updated Project S Forecast. Such updated Project Forecasts are based on good faith estimates and assumptions made by management of the Borrower, and management of the Borrower

believes that such Project Forecasts are reasonable and attainable.][10]

9. [No Equity Offering has closed since [the Principal Instrument Delivery Date][the last Advance Request prior hereto][11] and none is expected to close prior to funding of the Requested Advance[s].] [An Equity Offering has closed since [the Principal Instrument Delivery Date][the last Advance Request prior hereto] [12] or is expected to close prior to funding of the Requested Advance[s]. Annex IV describes the compliance with Sections 2.12(d) and 9.27 of the Arrangement Agreement in connection therewith.][13]

10. The amount currently on deposit in the Dedicated Account (prior to giving effect to the Requested Advances and the Requested Withdrawal Amount) is $[_____], allocated to the following subaccounts:

Applicable Subaccount	Amount on Deposit
	$
	$

The portion thereof that consists of Designated Overrun Amounts is $[_____]. The Requested Withdrawal Amount does not exceed the amount permitted to be withdrawn in connection with this Advance Request pursuant to Section 2.12(g) of the Arrangement Agreement. Attached hereto as Annex I is a reconciliation of any changes in each subaccount thereof since the last Advance Request prior hereto (both before and after giving effect to the provisions of Section 2.12 of the Arrangement Agreement, including withdrawal of the Requested Withdrawal Amount from the Applicable Subaccounts).

---

[10] Use the second bracketed alternative at the Borrower's option or if such updates are requested by DOE, in each case pursuant to Section 2.3(b)(vi) of the Arrangement Agreement.

[11] Use the first bracketed alternative for the initial Advance Request only. Otherwise use the second alternative.

[12] Use the first bracketed alternative for the initial Advance Request only. Otherwise use the second alternative.

[13] Use the second bracketed alternative if an IPO or Follow-On Equity Offering has closed since the last Advance Request or is expected to close etc. Otherwise use the first alternative.

11. The amount of Undrawn Deferred Amounts relating to Project P (a) before giving effect to the Requested Advance[s] is $[_____] and (b) after giving effect to the Requested Advance[s] is $[_____]. The amount of Undrawn Deferred Amounts relating to Project S (x) before giving effect to the Requested Advance[s] is $[_____] and (y) after giving effect to the Requested Advance[s] is $[_____].

12. [The Requested Advance identified above as an Interim True-Up Advance for Project P relates to the Deferred Request(s) made in Section 1 of the Advance Request(s) dated [_____], 20[__]. The portion of such Deferred Requests required to be deposited into the Dedicated Account in accordance with Section 2.12(j) of the Arrangement Agreement is $[_____] The requirements of Section 2.12(i) of the Arrangement Agreement have been met with respect to such Interim True-Up Advance.] [14]

13. [The Requested Advance identified above as an Interim True-Up Advance for Project S relates to the Deferred Request(s) made in Section 2 of the Advance Request(s) dated [_____], 20[__]. The portion of such Deferred Requests required to be deposited into the Dedicated Account in accordance with Section 2.12(j) of the Arrangement Agreement is $[_____] The requirements of Section 2.12(i) of the Arrangement Agreement have been met with respect to such Interim True-Up Advance.] [15]

14. The representations and warranties made by any Obligor in or pursuant to the Loan Documents (other than the representations and warranties contained in Article 8 of the Note Purchase Agreement) (a) are true and correct in all material respects as of the date hereof and (b) will be true and correct in all material respects at all times from the third Business Day prior to the Requested Advance Date referred to above through the Requested Advance Date (before and after giving effect, on the Requested Advance Date, to the funding of the Requested Advances on the Requested Advance Date), in each case as if made on and as of the date hereof or any such time (or, to the extent such representations and warranties specifically relate to an earlier date, on and as of such earlier date); *provided* that, with respect to such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, such representations are

---

[14] Insert this bracketed paragraph if the requested Advance is an Interim True-Up Advance.

[15] Insert this bracketed paragraph if the requested Advance is an Interim True-Up Advance.

and will be true and correct in all respects as of the dates in this Section [14].

15. No Default or Event of Default has occurred or is continuing on the date hereof or at any time from the third Business Day prior to the Requested Advance Date through the Requested Advance Date, before and after giving effect, on the Requested Advance Date, to the funding of the Requested Advances on the Requested Advance Date.

16. Since December 31, 2008, no event has occurred or could reasonably be expected to occur on the date hereof or at any time from the third Business Day prior to the Requested Advance Date through the Requested Advance Date, before and after giving effect, on the Requested Advance Date, to the funding of the Requested Advances on the Requested Advance Date, with respect to either Project, the Borrower, any Subsidiary or the Collateral that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

17. With respect to any Project whose Eligible Project Costs are to be financed in part with proceeds of the Requested Advances, as of the date hereof, the Borrower has not failed to achieve and maintain any Milestone for such Project.

18. The completion of each Project is reasonably expected to occur by the Specified Completion Date.

19. The proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P. The proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S. [The Cash Equity Condition has been satisfied.] [All Correction by Commitment Conditions have been satisfied.] [The Borrower has complied with the Corrective Plan dated [_____], 20[__] and approved by DOE].[16] The requirements of Section 2.3 have been met.

20. The proceeds of all Project P Advances with respect to the immediately preceding calendar quarter (or, if no Project P Advances were made with respect to the immediately preceding

[16] Use the bracketed language as applicable. If any of the conditions in three bracketed alternatives have not been met as required, insert explanation.

calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project P Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable Advance Requests for such Project P Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project P Advances or as otherwise approved by DOE in its sole discretion.[17]

21. The proceeds of all Project S Advances with respect to the immediately preceding calendar quarter (or, if no Project S Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project S Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable Advance Requests for such Project S Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project S Advances or as otherwise approved by DOE in its sole discretion.[18]

22. After giving effect to the funding of the Requested Advances, (a) the aggregate principal amount of all outstanding Advances made with respect to any Project will not exceed the Project Maximum Loan Amount with respect to such Project and (b) the aggregate principal amount of all outstanding Advances made with respect to all Projects under the Notes will not exceed the Maximum Total Loan Amount, in each case subject to any applicable adjustments in accordance with Section 2.12(h) of the Arrangement Agreement.

23. The Borrower has paid the Project P Borrower Payments required to have been paid as of the Requested Advance Date. The amounts corresponding to the Project P Borrower Payments have been, or will be, applied towards Eligible Project P Costs. Immediately following the Requested Advance Date, the aggregate amount of Project P Borrower Payments made by the Borrower (other than those funded with the proceeds of any withdrawals from the Dedicated Account pursuant to Section 2.12(g) of the Arrangement Agreement) shall equal or exceed twenty percent (20%) of the Total Project P Costs previously funded and to be funded with the

[17] The Borrower shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance.

[18] The Borrower shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance.

Requested Advance[s] (including, in the case of any Advance divided into two parts pursuant to Section 2.12(f) of the Arrangement Agreement, the Total Project P Costs to be funded under both the Current Request and the Deferred Request). Any Project P Excess Cost Overruns as of the Requested Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan).

24. The Borrower has paid the Project S Borrower Payments required to have been paid as of the Requested Advance Date. The amounts corresponding to the Project S Borrower Payments were, or will be, applied towards Eligible Project S Costs. Immediately following the Requested Advance Date, the aggregate amount of Project S Borrower Payments made by the Borrower (other than those funded with the proceeds of any withdrawals from the Dedicated Account pursuant to Section 2.12(g) of the Arrangement Agreement) shall equal or exceed twenty percent (20%) of the Total Project S Costs previously funded and to be funded with the current Advance (including, in the case of any Advance divided into two parts pursuant to Section 2.12(f) of the Arrangement Agreement, the Total Project S Costs to be funded under both the Current Request and the Deferred Request). Any Project S Excess Cost Overruns as of the Requested Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan).

25. The proceeds of all Requested Advances with respect to Project P to be made are needed for Eligible Project P Costs that have been incurred from and after December 15, 2008 and are due and payable not later than thirty (30) days following the date hereof with respect to services rendered, materials delivered and required deposits, and Annex II hereto contains a description in sufficient detail of such Eligible Project P Costs. The proceeds of all Requested Advances with respect to Project S to be made will be needed for Eligible Project S Costs that have been incurred from and after December 15, 2008 and are due and payable not later than thirty (30) days following the date hereof with respect to services rendered, materials delivered and required deposits, and Annex II hereto contains a description in sufficient detail of such Eligible Project S Costs.

26. Except for any Adverse Proceeding described on Schedule D-6 to the Information Certificate, no Adverse Proceedings are pending or threatened in writing against or affecting the Borrower or any of its

Subsidiaries or any of their respective property on the date hereof or at any time from the third Business Day prior to the Requested Advance Date through the Requested Advance Date, before and after giving effect, on the Requested Advance Date, to the funding of the Requested Advances on the Requested Advance Date, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and has not otherwise been disclosed to and expressly waived in writing by DOE.

27. No applicable Requirements of Law is in effect that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated by the Transaction Documents on the date hereof or at any time from the third Business Day prior to the Requested Advance Date through the Requested Advance Date, before and after giving effect, on the Requested Advance Date, to the funding of the Requested Advances on the Requested Advance Date.

28. Any unpaid balances or unsettled claims, if any, with contractors or suppliers have been adequately paid or, if being contested or negotiated in good faith, are bonded or otherwise provisioned. All mechanics liens or other liens of such contractors or suppliers (including with respect to any payments made out of the subject Advance) have been released in accordance with Section 5.3(n) of the Arrangement Agreement.

29. [Pursuant to Section 5.3(o) of the Arrangement Agreement, the unaudited consolidated and consolidating Financial Statements of the Borrower and its Subsidiaries for the Fiscal Year ended December 31, 2009 delivered to DOE on or prior to the date hereof and attached hereto as Annex IX fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in accordance with GAAP applied on a basis consistent with prior years, subject only to the absence of notes to the financial statements and changes resulting from normal audit adjustments.][19]

30. Attached hereto as Annex V is a completed Collateral Supplement executed by a Responsible Officer of each Obligor reflecting all assets of the types referenced in the Collateral Schedules that have

[19] Include for the initial Advance Request only. Such unaudited 2009 Financial Statements are required to be delivered to DOE for review at least five (5) Business Days prior to the first Requested Advance Date (or within such shorter period as DOE may have agreed to).

been acquired or developed by the Obligors (whether using the proceeds from any Advance or otherwise) since the date of the last Advance Request prior hereto. All other documents required by the Security Documents or under applicable Requirements of Law or requested by DOE in accordance with Section 5.3(p) of the Arrangement Agreement to be filed, registered or recorded or actions to be taken in order to create in favor of the Collateral Trustee, for the benefit of the Secured Parties, a First Priority Lien on the Collateral which is to be paid or reimbursed out of the proceeds of the Requested Advance[s], in whole or in part, and all other property and assets then owned by the Borrower and any other Obligor required by Sections 7.3 and 7.6 of the Arrangement Agreement, have been filed, registered, recorded and taken.

31. Any executed legal opinions, bring down certificates, reliance letters and other similar documents that have been requested by DOE in connection with the Requested Advance[s] in accordance with Section 5.3(q) of the Arrangement Agreement have been delivered to DOE.

32. The Borrower is in compliance with or shall have satisfied, as applicable, (a) all requirements and approvals pursuant to the Program Requirements, and (b) all other Applicable Regulations.

33. All material Governmental Approvals, permits (including, without limitation, building permits or notices of commencement) or consents not previously delivered and required for construction, operation or maintenance of the Projects, and such other governmental approvals, permits or consents as DOE has requested or as may be required under the Transaction Documents have been received.

34. All fees and expenses due and payable under the Arrangement Agreement on or prior to the Requested Advance Date have been paid in full.

35. Attached hereto as Annex VI is a list of all Subsidiaries that have not previously become Guarantors and their respective jurisdictions of organization. All documents required by Sections 7.6(a) and (b), as applicable, of the Arrangement Agreement with respect to each Domestic Subsidiary of the Borrower that has not previously become a Guarantor in accordance with Section 5.1(a)(iii) or Section 7.6(a) of the Arrangement Agreement or, if applicable, with respect to each Foreign Subsidiary required by DOE to become a Guarantor as of the date hereof pursuant to

Section 7.6(b) of the Arrangement Agreement are listed on such Annex and have been executed and delivered to DOE.

36. [The clauses required by Section 5.5 of 29 C.F.R. Part 5 and the appropriate wage determination(s) of the Secretary of Labor have been inserted into any contract or subcontract for construction, alteration or repair that was awarded prior to the disbursement of the Requested Advance. Attached hereto as Annex VI in accordance with Section 5.3(x) of the Arrangement Agreement are: (a) copies of all such contracts and subcontracts referenced in the preceding sentence (to the extent not previously delivered to DOE) and (b) a certificate from any contractor awarded such a contract that (x) such contractor and its subcontractors have complied with the provisions of Section 5.5 of 29 C.F.R. Part 5, or (y) there is a substantial dispute with respect to such provisions.][20]

37. [All requirements relating to environmental matters, Governmental Approvals and real estate set forth in Section 5.4 of the Arrangement Agreement have been met.] [21] [All documents referred to therein are listed in Annex VIII attached hereto.][22]

38. Pursuant to Section 5.6 of the Arrangement Agreement, the Borrower has deducted $[_____] from the total amount of the Requested Advances in respect of proceeds of Advances (a) not applied and (b) that will not be applied within 30-days of the applicable Advance Date, in either case to pay, or reimburse the Borrower for, Eligible Project Costs for the relevant Project thereof for which such funds were drawn.

39. Upon execution of the Advance Request Approval Notices, the Borrower shall be deemed to have represented and warranted that the conditions to execution of such Advance Request Approval Notices specified in Section 5.3 [and Section 5.4] [23] of the Arrangement Agreement have been satisfied.

40. From the third Business Day prior to the Requested Advance Date through the Requested Advance Date, each of the conditions

---

[20] Include for the first Advance Request for each Project the proceeds of which will be used, in whole or in part, to pay for construction, alteration or repair.

[21] Include for each Site-Dependent Advance.

[22] Include for the first Site-Dependent Advance only.

[23] Include for each Site-Dependent Advance.

precedent (other than delivery of the Advance Request Approval Notice by DOE) to (a) an Advance under Note P in accordance with the Note Purchase Agreement and Note P have been satisfied and (b) an Advance under Note S in accordance with the Note Purchase Agreement and Note S have been satisfied.

41. Upon the making of each Advance requested hereunder by FFB in response to the FFB Advance Requests, the Borrower shall be deemed to have represented and warranted that the conditions to lending specified in Section 5.3 [and Section 5.4][24] of the Arrangement Agreement have been satisfied.

TESLA MOTORS, INC.

By: _____
Name:
Title:

ANNEXES AND EXHIBITS

Annex I	Draw Request
Annex II	Eligible Project Costs
Annex III	Project Forecasts
Annex IV	IPO/Equity Offerings
Annex V	Collateral Supplement
Annex VI	Non-Guarantor Subsidiaries
Annex VII	Davis-Bacon Information
Annex VIII	Section 5.4 Documents
[Annex IX	2009 Unaudited Financial Statements][25]

[24] Include for each Site-Dependent Advance.

[25] Include for the initial Advance Request only.

Exhibit A	Note P FFB Advance Request
Exhibit B	Note S FFB Advance Request

ANNEX I

DRAW REQUEST

ANNEX II

ELIGIBLE PROJECT COSTS

ANNEX III

PROJECT FORECASTS

ANNEX IV

EQUITY OFFERINGS[26]

For any Equity Offering that closes prior to the Final Completion of both Projects and the full funding of the Initial Debt Service Account in accordance with Section 2.13(c) of the Arrangement Agreement:

1.	Date of closing of Equity Offering:	
2.	Total Net Offering Proceeds:	$
3.	50% of Total Net Offering Proceeds:	$
4.	Amount deposited into the Equity Proceeds Subaccount prior to the date specified in #1:	$
5.	Total amount to be deposited into the Dedicated Account the Equity Proceeds Account: [insert the lesser of (a) the amount set forth in #3 and (b) $100,000,000 minus the amount set forth in #4]	$
6.	Date of deposit:	

For all Equity Offerings:

7.	Aggregate Net Offering Proceeds received by the Borrower:	$
8.	Percentage of Aggregate Net Offering Proceeds received by the Borrower:	%

The Borrower hereby certifies that the percentage set forth in #8 above complies with the requirements of Section 9.27 of the Arrangement Agreement.

[26] Complete table/calculations separately for each Equity Offering

ANNEX V

COLLATERAL SUPPLEMENT

ANNEX VI

NON-GUARANTOR SUBSIDIARIES

ANNEX VI

DAVIS BACON INFORMATION

ANNEX VII

SECTION 5.4 DOCUMENTS

[ANNEX VIII

2009 UNAUDITED FINANCIAL STATEMENTS]

EXHIBIT A

FFB ADVANCE REQUEST
NOTE P

EXHIBIT B

FFB ADVANCE REQUEST
NOTE S

Exhibit B

SAMPLE PROJECT FORECAST AND OVERRUN CALCULATION

Tesla Motors, Inc.
PROJECT S STATUS REPORT
6/30/2010

Author:
We will do periodic project forecasts, including past costs, and measure these against the budget

Author:
This is the initial budget at closing, and does not change

Category	Status: Paid	Committed but Not Paid	Paid or Committed Costs	Remaining Uncommitted Costs	Forecasted Project Costs	Budgeted Project Costs	Status B/(W) Budget	Notes
Line item 1	$ -	$ -	0	$ 100,000	$ 100,000	$ 100,000	-	Starting Point.
Line item 2	0	0	0	80,000	80,000	80,000	-	Note that forecast = budget.
Line item 3	0	0	0	80,000	80,000	80,000	-	
Line item 4	0	0	0	80,000	80,000	80,000	-	
Total Costs without Contingency	0	0	0	320,000 (n)	320,000 (f)	320,000 (g)	-	Note definitions
Contingency	0	0	0	32,000 (c)	32,000	32,000 (d)	-	Here, the remaining contingency is equal to the starting contingency, as set forth in the Budget. Going forward, the remaining contingency will be equal to the contingency of the period immediately prior to the instant period, plus the change in Project Status between the two periods
Total	$ -	$ -	$ -	$ 352,000 (e)	$ 352,000 (a)	$ 352,000 (b)	$ -	
Contingency %				10.0%				Note % contingency remaining is a function of remaining uncommitted costs. Note contingency is at 10%
				NO EXCESS COST OVERRUN	$ -			
				Tesla Contribution Starting Balance	-			This will become important later, when we have multiple cost overruns, or an overrun followed by good news in a subsequent period.
				Permitted Overrun (Correction)	$ -			
				New Balance	$ -			Note also that our test is really evaluating what the excess cost overrun is at any given time period, and does not automatically adjust for overruns incurred in prior periods. We will be adjusting the contingency later to take this into account

Definitions in Term Sheet:
(a) = Forecasted Total Costs (note that this now includes the contingency)
(b) = Budgeted Total Costs (note that this now includes the contingency)
(c) = Remaining Project Contingency
(d) = Budgeted Project Contingency
(e) = Remaining Uncommitted Costs

(f) = Net Forecasted Total Costs = Forecasted Total Costs - Remaining Project Contingency
(g) = Net Budgeted Total Costs = Budgeted Total Costs - Budget Project Contingency
(h) = Net Remaining Uncommitted Costs

Note: all blue cells are changes from prior periods so we can track the project progression.

Category	Status: Paid	Committed but Not Paid	Paid or Committed Costs	Remaining Uncommitted Costs	Forecasted Project Costs	Budgeted Project Costs	Status B/(W) Budget	Notes
Line item 1	$ 35,000	$ 15,000	50,000	$ 75,000	$ 125,000	$ 100,000	$ (25,000)	At this point, the project is well below target, and on track
Line item 2	0	0	0	50,000	80,000	80,000	30,000	Note that project cost overruns in one area are balanced by savings in another
Line item 3	0	0	0	80,000	80,000	80,000	0	
Line item 4	2,500	4,000	6,500	17,000	23,500	80,000	36,500	
Total Costs without Contingency	37,500	19,000	56,500	222,000	278,500	320,000	41,500	
Contingency	0	0	0	73,500	73,500	32,000	(41,500)	Contingency increases by the change in project status, and will go up and down each period depending on performance against budget each period
Total	$ 37,500	$ 19,000	$ 56,500	$ 295,500	$ 352,000	$ 352,000	$ -	
Contingency %				33.1%				Note that having a growth in contingency is OK, as (a) forecast is still equal to budget and (b) over the life of the project, cost underruns in one area will likely be offset by overruns in another area.
				NO EXCESS COST OVERRUN	$ -			
				Tesla Contribution Starting Balance	-			
				Permitted Overrun (Correction)	$ -			
				New Balance	$ -			

Category	Paid	Committed but Not Paid	Paid or Committed Costs	Remaining Uncommitted Costs	Forecasted Project Costs	Budgeted Project Costs	Status (F/W) Budget	
Line Item 1	$ 35,000	$ 30,000	65,000	$ 93,000	$ 158,000	$ 100,000	$ (58,000)	Costs are trending higher, but there is still enough buffer in contingency to avoid tripping
Line Item 2	$ 30,000	0	30,000	30,000	60,000	60,000	28,000	the Excess Cost Overrun.
Line Item 3	0	0	0	83,500	83,500	60,000	(3,500)	Less than 50%, so Excess Cost trigger is at 7.5%
Line Item 4	2,500	4,000	6,500	17,000	23,500	60,000	36,500	
Total without Contingency	67,500	34,000	101,500	223,500	325,000	320,000	(5,000)	
Contingency	0	0	0	27,000	27,000	32,000	5,000	Note that some of the contingency (5 m) has been applied to the overrun.
Total	$ 67,500	$ 34,000	$ 101,500	$ 250,500	$ 352,000	$ 352,000	$ -	
Contingency %				12.1%				
				NO EXCESS COST OVERRUN	$ -			
				Tesla Constitution Starting Balance	$ -			
				Permitted Overrun (Correction)	$ -			No changes here. It will only get adjusted with an agreed action plan
				New Balance	$ -			

[redacted]

Category	Status: Paid	Committed but Not Paid	Paid or Committed Costs	Remaining Uncommitted Costs	Forecasted Project Costs	Budgeted Project Costs	Status $(W) Budget	
Line Item 1	$ 35,000	$ 55,000	90,000	$ 25,000	$ 115,000	$ 100,000	$ (15,000)	Forecast changes, producing a last minute cost overrun
Line Item 2	12,000	75,000	87,000	27,000	114,000	80,000	(34,000)	
Line Item 3	25,000	50,000	75,000	25,000	100,000	80,000	(20,000)	
Line Item 4	2,500	4,000	6,500	17,000	23,500	80,000	36,500	
Total without Contingency	74,500	184,000	258,500	94,000	352,500	320,000	(32,500)	
Contingency	0	0	0	800	800	32,000	31,100	Now a second surprise cost overrun exists, as remaining contingency is almost exhausted
Total	$ 74,500	$ 184,000	$ 258,500	$ 94,800	$ 353,400	$ 352,000	$ (1,400)	
Contingency %				1.0%				
				EXCESS COST OVERRUN	$ 3,800			
				Tesla Contribution Starting Balance	$ 1,400			
				Permitted Overrun (Correction)	$ -			
				New Balance	1,400			

[redacted]

Category	Status: Paid	Committed but Not Paid	Paid or Committed Costs	Remaining Uncommitted Costs	Forecasted Project Costs	Budgeted Project Costs	Status $(W) Budget	
Line Item 1	$ 36,000	$ 55,000	90,000	$ 25,000	$ 115,000	$ 100,000	$ (15,000)	
Line Item 2	12,000	75,000	87,000	27,000	114,000	80,000	(34,000)	Tesla agrees to fund the $3.8m additional required
Line Item 3	25,000	50,000	75,000	25,000	100,000	80,000	(20,000)	Project back in balance with a 5% remaining contingency
Line Item 4	2,500	4,000	6,500	17,000	23,500	80,000	36,500	
Total without Contingency	74,500	184,000	258,500	94,000	352,500	320,000	(32,500)	
Contingency	0	0	0	4,700	4,700	32,000	27,300	
Total	$ 74,500	$ 184,000	$ 258,500	98,700	$ 357,200	$ 352,000	$ (5,200)	
Contingency %				5.0%				
				NO EXCESS COST OVERRUN	$ -			
				Tesla Contribution Starting Balance	$ 1,400			
				Permitted Overrun (Correction)	$ 3,800			
				New Balance	5,200			

Note that this change would be addressed by an action plan as well.

Exhibit C

FORM OF COMPLIANCE CERTIFICATE

FORM OF COMPLIANCE CERTIFICATE

(Delivered pursuant to Section 8.1(d) and 8.2(b) of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: _____ __, 20__

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Compliance Certificate is delivered to you pursuant to Sections 8.1(d) and 8.2(b)of the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "Arrangement Agreement"), by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Compliance Certificate shall have their respective meanings specified in the Arrangement Agreement.

On behalf of the Borrower, I, [Name of Officer], HEREBY CERTIFY that I am the duly elected and qualified [Title of Officer] of the Borrower, and FURTHER CERTIFY that, as of the date hereof:

1. Pursuant to Section 8.1(d)(i) of the Arrangement Agreement,

[Select one:]

[attached hereto as Exhibit 8.1(d)(i) are unaudited consolidated Financial Statements of the Borrower and its Subsidiaries for the month ended as of _____ __, 20__, and such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in conformity with GAAP applied on a basis consistent with prior years, subject to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments;][1] *[or]*

[attached hereto as Exhibit 8.1(d)(i) are unaudited consolidated Financial Statements of the Borrower and its Subsidiaries for the fiscal quarter ended as of _____ __, 20__, and unaudited consolidating Financial Statements of the Borrower and its Subsidiaries for

---

[1] Use this paragraph for monthly Financial Statements required to be delivered pursuant to Section 8.1(a) of the Arrangement Agreement within 30 days after the end of each month

such quarter (to the extent available), and such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in conformity with GAAP applied on a basis consistent with prior years, subject to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments;][2] *[or]*

[attached hereto as Exhibit 8.1(d)(i) are audited consolidated Financial Statements of the Borrower and its Subsidiaries for the Fiscal Year ended as of _____ __, 20__, and unaudited consolidating Financial Statements of the Borrower and its Subsidiaries for such Fiscal Year (to the extent available), and such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in conformity with GAAP applied on a basis consistent with prior years;][3]

2. Pursuant to Section 8.1(d)(ii) of the Arrangement Agreement, no Default or Event of Default has occurred[;]

[*or if such certification cannot be made, describe the nature and period of existence of such Default or Event of Default and what corrective action the Borrower has taken or proposes to take with respect thereto*;]

3. Pursuant to Section 8.1(d)(iii) of the Arrangement Agreement, attached hereto as Exhibit 8.1(d)(iii) are computations in reasonable detail demonstrating that the Borrower is in compliance with the covenants set forth in Annex 9.1 of the Arrangement Agreement to the extent such covenants are applicable to the period included within the attached Financial Statements;

4. Pursuant to Section 8.1(d)(iv) of the Arrangement Agreement, Exhibit 8.1(d)(iv) attached hereto shows the applicable Excess Equity Proceeds Amount as of the first day of the period included within the attached Financial Statements, as of the last day of such period and the difference between such amounts, together with a summary of the Investment Amount, Cash Investment Amount, consideration and legal structure of each Permitted Equity Proceeds Investments made during such period; [and]

[5. Pursuant to Section 8.1(d)(v)(A) of the Arrangement Agreement,

---

[2] Use this paragraph for quarterly Financial Statements required to be delivered pursuant to Section 8.1(b) of the Arrangement Agreement within 45 days after the end of each fiscal quarter

[3] Use this paragraph for annual Financial Statements required to be delivered pursuant to Section 8.1(c) of the Arrangement Agreement within 120 days after the end of each Fiscal Year (applicable prior to an IPO) or 90 days after the end of each Fiscal Year (applicable following an IPO)

[Select one:]

[there has been no material change in the information set forth in the Collateral Schedules since _____ __, 20__[4] (except to the extent set forth in one or more Collateral Supplements previously executed and delivered to DOE and the Collateral Trustee);] *[or]*

[the Collateral Supplement executed by Borrower as of _____ __, 20__ and delivered to DOE and the Collateral Trustee reflects material changes in the information set forth in the Collateral Schedules since _____ __, 20__[5];]

6. Pursuant to Section 8.1(d)(iv)(B) of the Arrangement Agreement, all Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations required to be made under the Loan Documents, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Organizational Information Schedule or pursuant to paragraph 5 above to the extent necessary to protect and perfect the security interests under the Security Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

7. Pursuant to Section 8.1(d)(v)(C) of the Arrangement Agreement, attached hereto as Exhibit 8.1(d)(v)(C)-1 is an outline of all material insurance coverage maintained as of the date hereof by the Borrower and its Subsidiaries;

8. Pursuant to Section 8.1(d)(v)(C) of the Arrangement Agreement, attached hereto as Exhibit 8.1(d)(v)(C)-2 is an outline of all material insurance coverage to be maintained by the Borrower and its Subsidiaries in the immediately succeeeding Fiscal Year; and][6]

---

[4] Insert the later of the Principal Instrument Delivery Date and the date of the most recent Compliance Certificate delivered pursuant to Section 8.1(d) of the Arrangement Agreement

[5] Insert the later of the Principal Instrument Delivery Date and the date of the most recent Compliance Certificate delivered pursuant to Section 8.1(d) of the Arrangement Agreement

[6][9]. Pursuant to Section 8.2(b) of the Arrangement Agreement, attached hereto as Exhibit 8.2(b) is the revised business plan, and such plan is based on good faith estimates and assumptions made by management of the Borrower and management of the Borrower believes that such business plan is reasonable and attainable.

---

[6] Paragraphs 5 through 8 are only to be included in any Compliance Certificate delivered concurrently with the annual Financial Statements delivered pursuant to Section 8.1(b) of the Arrangement Agreement

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of the date first written above.

TESLA MOTORS, INC.

By: _____

Name: _____

Title: _____

[Signature page to Borrower Certificate (Closing)]

Exhibit 8.1(d)(i)

Financial Statements

Exhibit 8.1(d)(iii)

Computations showing Covenant Compliance

Phase A: During the period from the Principal Instrument Delivery Date through December 15, 2012:

(i) Current Ratio:

1.	Consolidated Current Assets:	$_____
2.	Consolidated Current Liabilities:	$_____
3.	Current Ratio:	_____ : 1.0

(ii) Cash Balance (to be calculated for last day of each month during such period):

1.	Cash Balance as of last day of month:	$_____
2.	Consolidated Interest Expense annualized for next twelve (12) months:	$_____
3.	$15,000,000:	$15,000,000
4.	Line 2 + Line 3:	$_____

Phase B: For each fiscal quarter ending after December 15, 2012:

(i) Leverage Ratio:

1.	Consolidated Total Debt (as of last day of Applicable Quarter):	$_____
2.	Consolidated Adjusted Liabilities (for trailing 12 months ending with each Applicable Quarter):	$_____
3.	Leverage Ratio:	_____ : 1.0

(ii) Interest Coverage Ratio

1.	Consolidated Adjusted EBITDA (for trailing 12 months ending with each Applicable Quarter):	$_____
2.	Consolidated Interest Expense (for trailing 12 months ending with each Applicable Quarter):	$_____
3.	Interest Coverage Ratio:	_____ : 1.0

(iii) Fixed Charge Coverage Ratio

1.	Consolidated Adjusted EBITDA (for trailing 12 months ending with each Applicable Quarter):	$_____
2.	Consolidated Fixed Charges (for trailing 12 months ending with each Applicable Quarter):	$_____
3.	Fixed Charge Coverage Ratio:	_____ : 1.0

(iv) Current Ratio

1.	Consolidated Current Assets:	$_____
2.	Consolidated Current Liabilities:	$_____
3.	Current Ratio:	_____ : 1.0

Phase B: For each fiscal quarter ending after December 15, 2012 (unless otherwise stated below):

(iv) Consolidated Total Liabilities to Shareholder Equity Ratio (measured from and after March 31, 2014):

1.	Consolidated Total Liabilties:	$_____
2.	Shareholder Equity:	$_____
3.	Consolidated Total Liabilities to Shareholder Equity Ratio:	_____ : 1.0

(v) Capital Expenditures:

1.	Capital Expenditures for period:	$_____
2.	Capital Expenditures for same period set forth in Business Plan:	$_____
3.	(Line 1 ÷ Line 2) x 100:	_____%

Exhibit 8.1(d)(iv)

Excess Equity Proceeds Amount

1.	Excess Equity Proceeds Amount as of first day of period included within Financial Statements attached hereto as Exhibit 8.1(d)(i):	$_____
2.	Excess Equity Proceeds Amount as of last day of period included within Financial Statements attached hereto as Exhibit 8.1(d)(i):	$_____
3.	Difference between Lines 1 and 2:	$_____

Permitted Equity Proceeds Investments (to be included for each transaction):

Describe legal structure of transaction: _____

_____

_____

_____

Consideration: $_____

Investment Amount: $_____

Cash Investment Amount: $_____

[Exhibit 8.1(d)(v)(C)-1

Outline of Current Insurance Coverage]

[Exhibit 8.1(d)(v)(C)-2

Outline of Insurance Coverage
(for immediately succeeding Fiscal Year)]

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit 8.2(b)

Revised Business Plan

Exhibit D

FORM OF CAEATFA CONVEYANCE/RECONVEYANCE INSTRUMENT

CONVEYANCE AND RECONVEYANCE

Reference is made to that certain Title Conveyance Agreement, dated _____ (the "Conveyance Agreement"), by and between the California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA") and Tesla Motors, Inc. ("Tesla"). Pursuant to the Conveyance Agreement, Tesla has agreed to convey up to $320 million of manufacturing and tooling equipment to CAEAFTA, and CAEAFTA has agreed to reconvey such equipment to Tesla immediately, but in any event not to exceed 10 days from the initial conveyance by Tesla. Such transactions are contemplated in connection with Tesla receiving "Financial Assistance", being a "Participating Party", and purchasing equipment as part of a transaction that is a "Project", under and each as defined in California Public Resources Code Section 26003 and are dependent on Tesla's payment of a fee of $_____.__ in accordance with Section 10020 of Title 4 of the California Code of Regulations.

1. Conveyance to CAEATFA. Pursuant to Section 2.A. of the Conveyance Agreement, Tesla hereby conveys, by its signature below, all of the right, title and interest of Tesla in and to the equipment identified on Exhibit A hereto (the "Equipment"); provided that the Equipment shall remain in Tesla's possession and shall remain subject to a security interest in favor of Midland Loan Services, Inc., as collateral trustee for the United States Department of Energy (the "DOE Lien"). Tesla represents and warrants that (a) the Equipment will not be used or placed in service until the reconveyance set forth below is effective and (b) the Equipment will be installed, maintained and operated at a site within the State of California.

2. Governing Law. This Conveyance and Reconveyance will be governed by and interpreted in accordance with the laws of the State of California.

[The remainder of this page is intentionally left blank]

Tesla has caused this Conveyance and Reconveyance to be executed by its authorized representative as of the date set forth below.

Tesla Motors, Inc.

By: _____
Name:
Title:
Date:

Reconveyance to Tesla. CAEATFA hereby accepts the conveyance of the Equipment subject to the DOE Lien and reconveys to Tesla all of the right, title and interest of the Equipment. CAEATFA represents and warrants that it has not imposed or otherwise permitted any liens (other than the DOE Lien) on the Equipment.

CAEATFA has caused this Conveyance and Reconveyance to be executed by its authorized representative as of the date set forth below.

California Alternative Energy and Advanced Transportation Financing Authority

By: _____
Name:
Title:
Date:

EXHIBIT A

Equipment

Exhibit E

FINANCIAL COVENANT EXAMPLES

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE A (FROM LOAN EXECUTION TO 12/17/2012)
Appendix I to Financial Covenants

	Example Income Statement ($1,000)	Quarter
A	Revenue	85,000
B	Cost of Goods Sold	16,750
C	Gross Margin	$ 6,250
D	Research & Development	10,000
E	Sales & Marketing	5,000
F	G&A	2,500
G	Operating Income	$ (11,250)
H	Depreciation & Amortization	2,000
I	Interest Expense (Income)	1,500
J	Tax	-
K	Net Income	$ (14,750)

	Example Balance Sheet ($1,000)	Quarter
	ASSETS	
	Current Assets	
L	Cash	37,750
M	Accounts Receivable, net	8,000
N	Inventory, net	40,000
O	Total Current Assets	85,750
P	Property and equipment, gross	72,000
Q	Accumulated Depreciation	(19,000)
R	Property and equipment, net	53,000
S	Total ASSETS	$ 138,750
	LIABILITIES & EQUITY	
	Current Liabilities	
T	Accounts Payable & Accrued Liabilities	50,000
U	Membership Fees	18,000
V	Current Portion, Long-Term Debt	-
W	Total Current Liabilities	68,000
X	Capital Lease	1,000
Y	Warranty Reserve	4,000
Z	Long-Term Debt	25,000
AA	Total LIABILITIES	$ 98,000
	EQUITY	
AB	Paid in Capital	250,000
AC	Local Grants and Incentives	-
AD	Retained earnings (deficit)	(204,360)
AE	Total EQUITY	$ 45,750
AF	TOTAL LIABILITIES & EQUITY	$ 138,750

	Example Cash Flow Statement ($1,000)	Quarter
	OPERATIONS	
AG	Net Income	(14,750)
AH	Depreciation	2,000
AI	Accounts Receivable, net	-
AJ	Inventory, net	(5,000)
AK	Accounts Payable & Accrued Liabilities	-
AL	Membership Fees	1,000
AM	Warranty Reserve	1,000
AN	Total Cash from Operations	$ (15,750)
	INVESTING	
AO	Capital Expenditures	(10,000)
AP	Total Cash from Investing	$ (10,000)
	FINANCING	
AQ	Current Portion, Long-Term Debt	-
AR	Capital Lease	-
AS	Long-Term Debt	15,000
AT	Paid in Capital	-
AU	Local Grants and Incentives	-
AV	Total Cash from Financing	$ 15,000
AW	Total Cash Flow	$ (10,750)

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE A (FROM LOAN EXECUTION TO 12/17/2012)
Appendix I to Financial Covenants
PHASE A COVENANTS

Current Assets to Current Liabilities (excluding Membership Fees, Vehicle Deposits, or Vehicle Reservations)

		Quarter
O	Current Assets	82,750
W	Current Liabilities	63,000
U	Membership Fees	13,000
W - U	Current Liabilities minus Membership Fees	50,000
	Current Ratio	1.65

Available Cash balance (calculated monthly).

		Quarter
L	Cash Balance	37,750
I x 4	Interest Payments (Annualized)	6,000
	Cash Balance in excess of Interest	31,750

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE B (FROM 12/17/2012 TO LOAN MATURITY)
Appendix I to Financial Covenants

	Example Income Statement ($1,000)	Quarter 1	Quarter 2	Quarter 3	Quarter 4
A	Revenue	600,000	600,000	600,000	600,000
B	Cost of Goods Sold	450,000	450,000	420,000	420,000
C	Gross Margin	$ 150,000	$ 150,000	$ 180,000	$ 180,000
D	Research & Development	30,000	30,000	30,000	30,000
E	Sales & Marketing	45,000	45,000	50,000	50,000
F	G&A	15,000	15,000	15,000	15,000
G	Operating Income	$ 60,000	$ 60,000	$ 85,000	$ 85,000
H	Depreciation & Amortization	10,000	10,000	10,000	10,000
I	Interest Expense (Income)	4,000	4,000	4,000	4,000
J	Tax	2,000	4,000	8,000	8,000
K	Net Income	$ 44,000	$ 42,000	$ 63,000	$ 63,000

	Example Balance Sheet ($1,000)	Quarter 0	Quarter 1	Quarter 2	Quarter 3	Quarter 4
	ASSETS					
	Current Assets					
L	Cash	56,500	75,500	68,500	109,500	124,500
M	Accounts Receivable, net	60,000	60,000	75,000	75,000	100,000
N	Inventory, net	105,000	110,000	115,000	120,000	125,000
O	Total Current Assets	210,500	236,500	258,500	304,500	349,500
P	Property and equipment, gross	302,000	322,000	342,000	362,000	382,000
Q	Accumulated Depreciation	(90,000)	(100,000)	(110,000)	(120,000)	(130,000)
R	Property and equipment, net	212,000	222,000	232,000	242,000	252,000
S	Total ASSETS	$ 422,500	$ 457,500	$ 490,500	$ 546,500	$ 601,500
	LIABILITIES & EQUITY					
	Current Liabilities					
T	Accounts Payable & Accrued Liabilities	50,000	50,000	50,000	60,000	50,000
U	Membership Fees	15,000	15,000	15,000	15,000	15,000
AY	Deferred Revenue	-	-	-	-	1,000
V	Current Portion, Long-Term Debt	40,000	40,000	40,000	40,000	40,000
W	Total Current Liabilities	105,000	105,000	105,000	115,000	106,000
X	Capital Lease	1,000	1,000	1,000	1,000	1,000
Y	Warranty Reserve	17,000	18,000	19,000	20,000	21,000
Z	Long-Term Debt	306,000	296,000	286,000	276,000	266,000
AA	Total LIABILITIES	$ 429,000	$ 420,000	$ 411,000	$ 402,000	$ 394,000
	EQUITY					
AB	Paid In Capital	250,000	250,000	250,000	250,000	250,000
AC	Local Grants and Incentives	1,000	1,000	1,000	1,000	1,000
AD	Retained earnings (deficit)	(257,500)	(213,500)	(171,500)	(108,500)	(45,500)
AE	Total EQUITY	$ (6,500)	$ 37,500	$ 79,500	$ 144,500	$ 207,500
AF	TOTAL LIABILITIES & EQUITY	$ 422,500	$ 457,500	$ 490,500	$ 546,500	$ 601,500

	Example Cash Flow Statement ($1,000)	Quarter 1	Quarter 2	Quarter 3	Quarter 4
	OPERATIONS				
AG	Net Income	44,000	42,000	63,000	63,000
AH	Depreciation	10,000	10,000	10,000	10,000
AI	Accounts Receivable, net	-	(25,000)	-	(25,000)
AJ	Inventory, net	(5,000)	(5,000)	(5,000)	(5,000)
AK	Accounts Payable & Accrued Liabilities	-	-	-	-
AL	Membership Fees	-	-	-	-
AX	Other Non-Cash Items	-	-	-	1,000
AM	Warranty Reserve	1,000	1,000	1,000	1,000
AN	Total Cash from Operations	$ 50,000	$ 23,000	$ 71,000	$ 45,000
	INVESTING				
AO	Capital Expenditures	(20,000)	(20,000)	(20,000)	(20,000)
AP	Total Cash from Investing	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)
	FINANCING				
AQ	Current Portion, Long-Term Debt	-	-	-	-
AR	Capital Lease	-	-	-	-
AS	Long-Term Debt	(10,000)	(10,000)	(10,000)	(10,000)
AT	Paid In Capital	-	-	-	-
AU	Local Grants and Incentives	-	-	-	-
AV	Total Cash from Financing	$ (10,000)	$ (10,000)	$ (10,000)	$ (10,000)
AW	Total Cash Flow	$ 20,000	$ (7,000)	$ 41,000	$ 15,000

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE B (FROM 12/17/2012 TO LOAN MATURITY)
Appendix I to Financial Covenants
PHASE B COVENANTS

Note: Calculation of "EBITDA" for Phase B Covenants

		Quarter 1	Quarter 2	Quarter 3	Quarter 4
	Net Income	$ 44,000	$ 42,000	$ 66,000	$ 69,000
	plus Interest Expense	4,000	4,000	4,000	4,000
	plus Provision for Taxes	2,000	4,000	6,000	8,000
	plus Depreciation and Amortization	10,000	10,000	10,000	10,000
	plus loss from Sales of Assets	-	-	-	-
	plus loss from Sales of Securities	-	-	-	-
	minus Interest Income	-	-	-	-
	minus other Non-Operating Income	-	-	-	-
	plus Income from Minority Interest	-	-	-	-
	plus loss from Discontinued Operations	-	-	-	-
	plus other Non-Cash Items reducing Income	-	-	-	1,000
	plus loss from Currency Fluctuations	-	-	-	-
AY	"EBITDA" defined	60,000	60,000	86,000	88,000

□ *The ratio of Funded Debt to EBITDA (for the trailing twelve months ending with each Applicable Quarter)*

		Quarter 4
AY, TTM	"EBITDA" (TTM)	291,000
V+X+Z	Funded Debt	307,000
	Funded Debt to EBITDA (TTM)	1.05

□ *The ratio of EBITDA (for the trailing twelve months ending with each Applicable Quarter) to Interest Expense (for such period)*

		Quarter 4
I	Interest Expense	4,000
I, TTM	Interest Expense (TTM)	16,000
AY, TTM	"EBITDA" (TTM)	291,000
	EBITDA (TTM) to Interest Expense (TTM)	18.19

□ *The ratio of EBITDA to Fixed Charges ("Fixed Charge Coverage Ratio")*

		Quarter 4
AY, TTM	"EBITDA" (TTM)	291,000
I	Interest Expense (TTM)	16,000
AQ+AS	Principal Payments (TTM)	40,000
AP	CAPX (TTM)	80,000
	Total Fixed Charges (TTM)	136,000
	EBITDA (TTM) to Fixed Charges (TTM)	2.14

□ *The ratio of Current Assets to Current Liabilities ("Current Ratio")*

		Quarter 4
O	Current Assets	349,500
W	Current Liabilities	106,000
	Current Ratio	3.30

□ *Total Liabilities (including warranty reserve) to Shareholder Equity*

		Quarter 4
AA	Total Liabilities	394,000
AE	Total Shareholder Equity	297,500
	Total Liabilities to Shareholder Equity	1.30

□ *Capital Expenditures incurred for the period*

		Quarter 4
AO	Capital Expenditures	20,000

EXECUTION COPY

GUARANTEE

made by certain Subsidiaries of

TESLA MOTORS, INC.

in favor of

UNITED STATES DEPARTMENT OF ENERGY

FEDERAL FINANCING BANK

and

THE HOLDERS OF THE NOTES DESCRIBED HEREIN

Dated as of January 20, 2010

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION 2
1.1 Definitions 2
1.2 Other Rules of Construction 2

ARTICLE II GUARANTEE 3
2.1 Guarantee 3
2.2 Right of Contribution 4
2.3 No Subrogation 5
2.4 Amendments, etc. with respect to the Guaranteed Obligations 5
2.5 Guarantee Absolute and Unconditional 5
2.6 Reinstatement 7
2.7 Payments 7
2.8 Payment of Loan Document Amounts 7

ARTICLE III MISCELLANEOUS 7
3.1 Amendments in Writing 7
3.2 Delay and Waiver 7
3.3 Right of Set-Off 8
3.4 Representations and Warranties; Covenants 8
3.5 Notices 8
3.6 Severability 8
3.7 Judgment Currency 9
3.8 Indemnification 9
3.9 Limitation on Liability 9
3.10 Successors and Assigns 10
3.11 Further Assurances and Corrective Instruments 10
3.12 Governing Law; Waiver Of Jury Trial 10
3.13 Submission to Jurisdiction, Etc. 10
3.14 Entire Agreement 11
3.15 Benefits of Agreement 11
3.16 Headings 11
3.17 Counterparts 11
3.18 No Partnership; Etc. 11
3.19 Releases 12
3.20 Independence of Covenants 12
3.21 Additional Guarantors 12
3.22 Authority of DOE 12

GUARANTEE

GUARANTEE, dated as of January 20, 2010 (this "Guarantee"), made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of the United States Department of Energy ("DOE"), the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("FFB"), and each holder from time to time of the Notes (as hereinafter defined) issued pursuant to the Note Purchase Agreement (as hereinafter defined).

PRELIMINARY STATEMENTS

A. Pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement"), between TESLA MOTORS, INC. (the "Borrower") and DOE, DOE agreed to arrange for FFB to purchase certain future advance promissory notes (as amended, supplemented or otherwise modified from time to time, the "Notes") to be issued by the Borrower pursuant to the Note Purchase Agreement, dated as of January 20, 2010, among the Borrower, DOE and FFB (as amended, supplemented or otherwise modified from time to time, the "Note Purchase Agreement") and to make extensions of credit to the Borrower from time to time upon the terms and subject to the conditions set forth in the Notes and the other Loan Documents.

B. Pursuant to the Program Financing Agreement, dated as of September 16, 2009, between DOE and FFB, DOE will be obligated to reimburse FFB for any liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the Notes or the related Note Purchase Agreement.

C. The proceeds of the extensions of credit under the Funding Agreements will be used by the Borrower to fund Eligible Project Costs incurred by the Borrower under the Advanced Technology Vehicles Manufacturing Incentive Program administered by DOE.

D. Each of the Guarantors is a Subsidiary of the Borrower, the Borrower and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from such proceeds.

E. It is a condition precedent to the obligation of DOE under the Arrangement Agreement to deliver the Principal Instruments required for FFB to purchase the Notes under the Note Purchase Agreement that the Guarantors shall have executed and delivered this Guarantee.

NOW, THEREFORE, in consideration of the premises and to induce DOE to enter into the Arrangement Agreement and FFB to enter into the Note Purchase

Agreement, purchase the Notes and make extensions of credit to the Borrower from time to time thereunder, each Guarantor hereby agrees as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in the Arrangement Agreement. In addition, the following terms shall have the following meanings:

"Guaranteed Obligations" means the collective reference to all Note P Obligations and all Note S Obligations.

"Guaranteed Parties" means, collectively, DOE, FFB and any subsequent holder or holders from time to time of the Notes (or any portion thereof).

1.2 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Guarantee denoting one gender only shall be construed to include the other gender;

(b) when used in this Guarantee, the words "including", "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Guarantee, the words "herein", "hereby", "hereunder", "hereof", "hereto", "hereinbefore", and "hereinafter", and words of similar import, unless otherwise specified, shall refer to this Guarantee in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Guarantee;

(d) each reference in this Guarantee to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Guarantee;

(e) capitalized terms in this Guarantee referring to any Person or party to any Loan Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(f) each reference in this Guarantee to any Loan Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Loan Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(g) each reference in this Guarantee to any Requirements of Law shall be construed as a reference to such Requirements of Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(h) each reference in this Guarantee to any provision of any other Loan Document will include reference to any definition or provision incorporated by reference within that provision;

(i) 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, Capital Stock, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights;

(j) the word "will" shall be construed as having the same meaning and effect as the word "shall"; and

(k) the meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

ARTICLE II

GUARANTEE

2.1 Guarantee.

(a) Each Guarantor hereby, jointly and severally, unconditionally, absolutely and irrevocably, guarantees, as primary obligor and not merely as surety, to each of the Guaranteed Parties, for the ratable benefit of each, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Guaranteed Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).

(c) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing this Guarantee or affecting the rights and remedies of the Guaranteed Parties hereunder.

(d) This Guarantee is continuing and shall remain in full force and effect until all the Guaranteed Obligations and the obligations of each Guarantor under this Guarantee shall have been paid in full (other than unasserted contingent indemnity obligations, which shall nonetheless survive termination of this Guarantee in accordance with Section 3.8) and all Loan Commitment Amounts have been reduced to zero, notwithstanding that from time to time during the term of the Arrangement Agreement, the Note Purchase Agreement or the Notes the Borrower may be free from any Guaranteed Obligations.

(e) No payment made by any of the Guarantors, any other guarantor or any other Person or received or collected by any Guaranteed Party from any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Guaranteed Obligations or any payment received or collected from such Guarantor in respect of the Guaranteed Obligations), remain liable for the Guaranteed Obligations up to the maximum liability of such Guarantor hereunder until the Guaranteed Obligations are paid in full (other than unasserted contingent indemnity obligations) and all Loan Commitment Amounts have been reduced to zero.

(f) Each Guarantor understands and agrees that if acceleration of the time for payment of any Guaranteed Obligations by the Borrower under the Loan Documents is stayed upon the insolvency, bankruptcy or reorganization of the Borrower (or proceedings similar thereto), all such amounts otherwise subject to acceleration under the terms of the Arrangement Agreement shall nonetheless be payable by the Guarantors hereunder immediately upon demand by the Guaranteed Parties.

2.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to any Guaranteed Party, and each Guarantor shall remain liable to such Guaranteed Party for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by any Guaranteed Party, no Guarantor shall be entitled to be subrogated to any of the rights of any Guaranteed Party against any of the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Collateral Trustee, DOE, FFB or any other Guaranteed Party for the payment of the Guaranteed Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Guaranteed Parties by the Borrower on account of the Guaranteed Obligations are paid in full (other than unasserted contingent indemnity obligations) and all Loan Commitment Amounts have been reduced to zero. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full (other than unasserted contingent indemnity obligations) or all Loan Commitment Amounts have not been reduced to zero, such amount shall be held by such Guarantor in trust for the Guaranteed Parties, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Collateral Trustee (or, if all Liens on the Collateral granted under the Security Documents shall have been released, to DOE) in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Collateral Trustee (or DOE, as applicable), to be applied against the relevant Guaranteed Obligations, whether matured or unmatured, in such order as specified in the relevant Loan Documents.

2.4 Amendments, etc. with respect to the Guaranteed Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, (a)any demand for payment of any of the Guaranteed Obligations made by any Guaranteed Party may be rescinded by such Guaranteed Party and any of the Guaranteed Obligations continued, (b)the Guaranteed Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Guaranteed Party, (c)any Loan Document and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, from time to time, and (d)any collateral security, guarantee or right of offset at any time held by any Guaranteed Party for the payment of the Guaranteed Obligations may be sold, exchanged, waived, surrendered or released. No Guaranteed Party shall have any obligation to any Guarantor to protect, secure, perfect or insure any Lien at any time held by it as security for the Guaranteed Obligations or for this Guarantee or any property subject thereto.

2.5 Guarantee Absolute and Unconditional.

(a) Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Guaranteed Party upon this Guarantee or acceptance

of this Guarantee. The Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guarantee. All dealings between any of the Borrower and any of the Guarantors, on the one hand, and the Guaranteed Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guarantee.

(b) Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Guaranteed Obligations.

(c) Each Guarantor understands and agrees that this Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance, and not of collection, without regard to (i) the validity, regularity or enforceability against the Borrower or any Guarantor of the Loan Documents, any of the Guaranteed Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Guaranteed Party, (ii)any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against any Guaranteed Party, (iii)any waiver or consent by any Guaranteed Party except as expressly stated therein, (iv) any extension, renewal, increase, decrease, settlement, compromise or release in respect of the Guaranteed Obligations, (v) any release or substitution of any other guarantor or collateral security, (vi)any delay or omission or lack of diligence or care in exercising any rights or powers with respect to any of the foregoing, (vii)any change in the corporate existence, structure or ownership of the Borrower or any other guarantor or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Borrower or any other guarantor or its assets or any resulting release or discharge of any Guaranteed Obligations, or (viii)any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge or defense of a surety or guarantor or any other obligor on any obligation of the Borrower for its Guaranteed Obligations, or of such Guarantor under this Guarantee, in bankruptcy or in any other instance. Each Guarantor hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any defense based on any of the foregoing (i) through (viii).

(d) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Guaranteed Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and any failure by any Guaranteed Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or

guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Guaranteed Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.6 Reinstatement. This Guarantee shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by any Guaranteed Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization (or proceedings similar thereto) of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made. The provisions of this Section 2.6 shall survive termination of this Guarantee.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to DOE, FFB or any other applicable holder of Guaranteed Obligations without set-off or counterclaim in Dollars, at the payment office specified by DOE, FFB or any such holder, as the case may be, to such Guarantor.

2.8 Payment of Loan Document Amounts. Anything in this Guarantee to the contrary notwithstanding, amounts payable by Guarantor for Secured Obligations owed by Borrower under Section 4.1 of the Arrangement Agreement shall be without duplication of any amounts payable by Guarantor for Secured Obligations owed by the Borrower pursuant to (v) the Arrangement Agreement, (w) the Notes, (x) the Note Purchase Agreement, (y) the subrogation rights referred to in Section 4.2 of the Arrangement Agreement or (z) the provisions of Section 12.8 of the Arrangement Agreement.

ARTICLE III

MISCELLANEOUS

3.1 Amendments in Writing. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except in accordance with Section 12.1 of the Arrangement Agreement.

3.2 Delay and Waiver. No delay or omission in exercising any right, power, privilege or remedy under this Guarantee or any other Loan Document, including any rights and remedies in connection with the occurrence of a Default or Event of Default shall impair any such right, power, privilege or remedy of the Guaranteed Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy,

or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. All rights, powers, privileges and remedies, either under this Guarantee or any other Loan Document or by law or otherwise afforded to any of the Guaranteed Parties, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that any of the Guaranteed Parties may otherwise have.

3.3 Right of Set-Off. In addition to any rights now or hereafter granted under any Requirements of Law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Guaranteed Party is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Guarantor or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other Indebtedness at any time held or owing by such Guaranteed Party (including by any branches and agencies of such Guaranteed Party wherever located) to or for the credit or the account of any Guarantor against and on account of the Guaranteed Obligations and liabilities of any Guarantor to such Guaranteed Party under this Guarantee or any other Loan Documents. The Guaranteed Parties agree to promptly notify such Guarantor after any such setoff and application made by it; *provided* that the failure to give such notice shall not affect the validity of such setoff and application

3.4 Representations and Warranties; Covenants. Each Guarantor hereby represents and warrants that all of the representations and warranties in the Arrangement Agreement regarding such Guarantor and its property and assets are true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects). All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Guarantee and the making of the Advances under the Funding Agreements. Notwithstanding anything contained herein to the contrary, each Guarantor hereby covenants and agrees to comply with each of the affirmative and negative covenants set forth in the Arrangement Agreement applicable to such Guarantor and its property and assets.

3.5 Notices. All notices, requests and demands to or upon the DOE or any Guarantor hereunder shall be effected in the manner provided for in Section 12.5 of the Arrangement Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1 or in the case of any Additional Guarantor, on its Subsidiary Joinder Agreement.

3.6 Severability. The holding by any court of competent jurisdiction that any remedy pursued by any Guaranteed Party hereunder is unavailable or unenforceable shall not affect in any way the ability of any Guaranteed Party to pursue

any other remedy available to it. In the event any provision of this Guarantee shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Guarantee and shall not invalidate or render unenforceable any other provision hereof.

3.7 Judgment Currency. Each Guarantor agrees, to the fullest extent permitted under applicable law, to indemnify each Guaranteed Party against any loss incurred by such Guaranteed Party as a result of any judgment or order being given or made for any amount due such Guaranteed Party under the Loan Documents and such judgment or order being expressed and to be paid in a Judgment Currency other than the Currency of Denomination and as a result of any variation between (i) the rate of exchange at which amounts in the Currency of Denomination are converted into Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange at which such Guaranteed Party would have been able to purchase the Currency of Denomination with the amount of the Judgment Currency actually received by such Guaranteed Party had it utilized the amount of Judgment Currency so received to purchase the Currency of Denomination as promptly as practicable upon receipt thereof. The foregoing indemnity shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant Currency of Denomination that are documented and reasonable in light of market conditions at the time of such conversion.

3.8 Indemnification.

(a) Each Guarantor, jointly and severally, agrees to pay or reimburse each Guaranteed Party for all its costs and expenses incurred in collecting the Guaranteed Obligations against the Guarantors or otherwise enforcing or preserving any rights under this Guarantee and the other Loan Documents, including the reasonable fees and other charges of counsel to each Guaranteed Party.

(b) Each Guarantor, jointly and severally, agrees to pay, indemnify and hold the Secured Parties and each other Indemnified Person harmless from and against any and all Indemnified Liabilities to the fullest extent as the Borrower would be required to do so pursuant to Section 12.8 of the Arrangement Agreement.

(c) The provisions of this Section 3.8 shall survive any exercise of remedies under this Guarantee and satisfaction or discharge of the Guaranteed Obligations and termination of this Guarantee, and shall be in addition to any other rights and remedies of any Indemnified Person.

3.9 Limitation on Liability. No claim shall be made by any Guarantor or any of its Affiliates against any Guaranteed Party or any of their Affiliates, directors,

employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Guarantee or the other Loan Documents or any act or omission or event occurring in connection therewith; and each Guarantor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

3.10 Successors and Assigns. This Guarantee shall be binding upon each Guarantor, its successors and assigns, and inure to the benefit of the Guaranteed Parties and their respective successors and assigns; *provided* that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of DOE.

3.11 Further Assurances and Corrective Instruments. To the extent permitted by Requirements of Law, each of the parties hereto shall, upon the written request of any other party, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, within a reasonable period of such request, such amendments or supplements hereto, and such further instruments, and take such further actions, as may be necessary in such party's reasonable judgment to effectuate the intention, performance and provisions hereof.

3.12 Governing Law; Waiver Of Jury Trial.

(a) THIS GUARANTEE, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, FEDERAL LAW AND NOT THE LAW OF ANY STATE OR LOCALITY. TO THE EXTENT THAT A COURT LOOKS TO THE LAWS OF ANY STATE TO DETERMINE OR DEFINE THE FEDERAL LAW, IT IS THE INTENTION OF THE PARTIES HERETO THAT SUCH COURT SHALL LOOK ONLY TO THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.13 Submission to Jurisdiction, Etc.

(a) Any legal action or proceeding against any Guarantor with respect to or arising out of this Guarantee may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District

of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Guarantor or any of its property may be found. By execution and delivery of this Guarantee, each Guarantor accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Guarantee. Each Guarantor hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under or in connection with this Guarantee brought before the foregoing courts on the basis of forum non-conveniens or improper venue. Each Guarantor agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) Each Guarantor hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 3.5 and that such mailing is sufficient to confer personal jurisdiction over such Guarantor in any proceeding in any court referred to in Section 3.13(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 3.13(b) shall affect the right of the Guaranteed Parties to serve process in any other manner permitted by law.

3.14 Entire Agreement. This Guarantee and the other Loan Documents constitute the entire agreement and understanding, and supersede all prior agreements and understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

3.15 Benefits of Agreement. Nothing in this Guarantee or any other Loan Document, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Guarantee.

3.16 Headings. Paragraph headings have been inserted in the Loan Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Loan Documents and shall not be used in the interpretation of any provision of the Loan Documents.

3.17 Counterparts. This Guarantee may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

3.18 No Partnership; Etc. The Guaranteed Parties and the Guarantors intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Guarantee shall be deemed or construed to create a partnership,

tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Guaranteed Parties and the Guarantors or any other Person. The Guaranteed Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Guarantors or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and expenses in connection with or arising from the ownership, operation or occupancy of any Project or any other assets and to perform all obligations under the agreements and contracts relating to any Project or any other assets shall be the sole responsibility of the Guarantors.

3.19 Releases. A Guarantor shall be released from its obligations hereunder in the event that the provisions of Section 12.21 of the Arrangement Agreement shall be satisfied with respect to such Guarantor.

3.20 Independence of Covenants. All covenants under this Guarantee and the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

3.21 Additional Guarantors. Each Subsidiary of the Borrower that is required to become a party to this Guarantee as an Additional Guarantor pursuant to Section 7.6 of the Arrangement Agreement, or that the Borrower desires to become a party to this Guarantee, shall become a Guarantor for all purposes of this Guarantee upon execution and delivery by such Subsidiary of a Subsidiary Joinder Agreement.

3.22 Authority of DOE. Each Guarantor acknowledges that, for so long as FFB is the holder of the Notes, the rights and responsibilities of DOE and FFB under this Guarantee with respect to any action taken by DOE or FFB or the exercise or non-exercise by DOE or FFB of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Guarantee shall, as among the Guaranteed Parties, be governed by the Program Financing Agreement or the Arrangement Agreement, as applicable, and by such other agreements with respect thereto as may exist from time to time among them, but, as between DOE and the Guarantors, DOE shall be conclusively presumed to be acting as agent for FFB (a) if any Note is in Default, in respect of acceleration of such Note, the exercise of other available remedies, and the disposition of sums or property recovered and (b) in the event that FFB shall become subject to any duties under any applicable law or regulation solely because of its providing or having provided financing under a Note purchased under a Note Purchase Agreement entered into under the Program Financing Agreement, DOE shall serve as agent for FFB to the fullest extent permitted under that law or regulation in connection with satisfying the requirements of that law or regulation, in either case with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

[No further text on this page; signatures follow]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

Schedule 1

NOTICE ADDRESSES OF GUARANTORS

Tesla Motors New York LLC	c/o Tesla Motors, Inc. 1050 Bing Street San Carlos, CA 94070 Attention: Chief Financial Officer Telephone No.: (650) 701-2690 Facsimile No.: (650) 701-2612 Email Address: deepak@teslamotors.com with a copy to (which copy shall not constitute notice): c/o Tesla Motors, Inc. 1050 Bing Street San Carlos, CA 94070 Attention: General Counsel Telephone No.: (650) 413-4000 Facsimile No.: (650) 701-2620 Email Address: generalcounseldoe@teslamotors.com

EXECUTION VERSION

INTERCOMPANY SUBORDINATION AGREEMENT

among

TESLA MOTORS, INC.,

EACH OF THE GUARANTORS PARTY HERETO

and

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

dated January 20, 2010

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS; CONSTRUCTION 2
1.1 Terms Defined in Arrangement Agreement. 2
1.2 Certain Defined Terms. 2
1.3 Other Rules of Construction. 3

ARTICLE II SUBORDINATION 4
2.1 Subordination to Payment of Secured Obligations. 4
2.2 Subordination Upon Any Distribution of Assets of the Subordinated Parties. 4

ARTICLE III PAYMENTS ON SUBORDINATED DEBT 5
3.1 Permitted Payments on Indebtedness for Borrowed Money. 5
3.2 No Payment on Indebtedness for Borrowed Money Upon Secured Obligations Defaults. 5
3.3 Permitted Payments on Other Subordinated Debt. 5

ARTICLE IV SUBORDINATION OF REMEDIES 5
4.1 Subordination of Remedies. 5

ARTICLE V COLLATERAL TRUSTEE 6
5.1 Payment Over to Collateral Trustee. 6
5.2 Authorization to Collateral Trustee. 6

ARTICLE VI CERTAIN AGREEMENTS OF EACH SUBORDINATED PARTY 6
6.1 No Benefits. 6
6.2 No Interference. 7
6.3 Reliance by the Secured Parties. 7
6.4 Waivers. 7
6.5 Obligations of Each Subordinated Party Not Affected. 7
6.6 Rights of the Collateral Trustee and the Other Secured Parties Not to Be Impaired. 8
6.7 Financial Condition of the Subordinated Parties. 8

ARTICLE VII SUBROGATION 8
7.1 Subrogation. 8
7.2 Payments Over to the Subordinated Parties. 9

ARTICLE VIII NO TRANSFER OF SUBORDINATED DEBT 9

ARTICLE IX OBLIGATIONS OF THE SUBORDINATED PARTIES NOT AFFECTED 9

ARTICLE X ENDORSEMENT OF SUBORDINATED PARTY DOCUMENTS 9

ARTICLE XI MISCELLANEOUS 10
11.1 Amendments, etc 10
11.2 Delay and Waiver 10
11.3 Survival of Representations and Warranties 10
11.4 Notices 10
11.5 Severability 10
11.6 Judgment Currency 11
11.7 Indemnification 11
11.8 Limitation on Liability 12
11.9 Successors and Assigns 12
11.10 Further Assurances and Corrective Instruments 12
11.11 Reinstatement 12
11.12 Governing Law; Waiver Of Jury Trial 12
11.13 Submission to Jurisdiction, Etc. 13
11.14 Entire Agreement 13
11.15 Benefits of Agreement 13
11.16 Headings 13
11.17 Counterparts 14
11.18 No Partnership; Etc. 14
11.19 Independence of Covenants 14
11.20 Additional Subordinated Parties 14
11.21 Releases 14

INTERCOMPANY SUBORDINATION AGREEMENT

THIS INTERCOMPANY SUBORDINATION AGREEMENT (this "Agreement"), dated as of January 20, 2010, is made by TESLA MOTORS, INC., a Delaware corporation (the "Borrower") and each of the Guarantors listed on the signature pages hereof or that becomes a party hereto as provided herein (together with the Borrower, collectively, the "Subordinated Parties" and each, a "Subordinated Party"), in favor of MIDLAND LOAN SERVICES, INC., a Delaware corporation (the "Collateral Trustee"), in its capacity as collateral trustee for the ratable benefit of the United States Department of Energy, an agency of the United States of America ("DOE") and the other Secured Parties (as defined in the Arrangement Agreement referred to below).

PRELIMINARY STATEMENTS

A. Pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement"), between the Borrower and DOE, DOE has agreed to arrange for the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("FFB"), to purchase certain future advance promissory notes (as amended, supplemented or otherwise modified from time to time, the "Notes") to be issued by the Borrower pursuant to the Note Purchase Agreement, dated as of January 20, 2010, among the Borrower, DOE and FFB (as amended, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), and to make extensions of credit to the Borrower from time to time upon the terms and subject to the conditions set forth in the Notes and the other Loan Documents.

B. Pursuant to the Program Financing Agreement, dated as of September 16, 2009, between DOE and FFB, DOE will be obligated to reimburse FFB for any liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the Notes or the related Note Purchase Agreement.

C. The proceeds of the extensions of credit under the Funding Agreements will be used by the Borrower to fund Eligible Project Costs incurred by the Borrower under the Advanced Technology Vehicles Manufacturing Incentive Program administered by DOE.

D. Each Subordinated Party has entered into or may enter into Intercompany Arrangements from time to time with one or more other Subordinated Parties.

E. Each Subordinated Party has agreed to the subordination of the obligations of each other Subordinated Party under such Intercompany Arrangements to such Subordinated Party, upon the terms and subject to the conditions set forth in this Agreement.

F. It is a condition precedent to the obligation of DOE under the Arrangement Agreement to deliver the Principal Instruments required for FFB to purchase the Notes under the Note Purchase Agreement that the Subordinated Parties shall have executed and delivered this Agreement to the Collateral Trustee for the ratable benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the premises and to induce DOE to enter into the Arrangement Agreement and to induce FFB to enter into the Note Purchase Agreement, purchase the Notes and make extensions of credit to the Borrower thereunder, each Subordinated Party hereby agrees with the Collateral Trustee, for the ratable benefit of the Secured Parties, as follows:

ARTICLE I
DEFINITIONS; CONSTRUCTION

1.1 Terms Defined in Arrangement Agreement. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in the Arrangement Agreement.

1.2 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Additional Subordinated Party" has the meaning set forth in Section 11.20.

"Arrangement Agreement" has the meaning given to such term in the recitals.

"Borrower" has the meaning given to such term in the recitals.

"DOE" has the meaning given to such term in the recitals.

"Collateral Trustee" has the meaning given to such term in the preamble.

"Insolvency Event" has the meaning given to such term in Section 2.2.

"Intercompany Arrangements" means all intercompany loans, liabilities and agreements, including, without limitation, all sublease agreements, management services agreements, marketing agreements, dealer agreements, distribution agreements, receivables and payables, in each case which are in effect for any Subordinated Party on, or entered into by a Subordinated Party after, the Principal Instrument Delivery Date.

"Proceeds" has the meaning given to such term in Section 3.

"Subordinated Debt" means, with respect to each Subordinated Party, all indebtedness, liabilities, and other obligations (including payment obligations under all Intercompany Arrangements, whether in respect of services rendered, indebtedness for money borrowed, sublease of space, or otherwise) of any other Subordinated Party owing to such Subordinated Party, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including all fees and all other amounts payable by any other Subordinated Party to such Subordinated Party under or in connection with any documents or instruments related thereto.

"Subordinated Debt Payment" means any payment or distribution by or on behalf of the Subordinated Parties, directly or indirectly, of assets of the Subordinated Parties of any kind or character, whether in cash, property, or securities, including on account of the purchase, redemption, or other acquisition of Subordinated Debt, as a result of any collection, sale, or other disposition of collateral, or by setoff, exchange, or in any other manner, for or on account of the Subordinated Debt.

"Subordinated Parties" has the meaning given to such term in the recitals.

1.3 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Agreement denoting one gender only shall be construed to include the other gender;

(b) when used in this Agreement, the words "including", "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Agreement, the words "herein", "hereby", "hereunder", "hereof", "hereto", "hereinbefore", and "hereinafter", and words of similar import, unless otherwise specified, shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(d) each reference in this Agreement to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(e) capitalized terms in this Agreement referring to any Person or party to any Loan Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(f) each reference in this Agreement to any Loan Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Loan Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(g) each reference in this Agreement to any Requirements of Law shall be construed as a reference to such Requirements of Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(h) each reference in this Agreement to any provision of any other Loan Document will include reference to any definition or provision incorporated by reference within that provision;

(i) 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, Capital Stock, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights; and

(j) the word "will" shall be construed as having the same meaning and effect as the word "shall".

ARTICLE II
SUBORDINATION

2.1 Subordination to Payment of Secured Obligations. As to each Subordinated Party, all payments on account of the Subordinated Debt shall be subject, subordinate, and junior, in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the payment in full of the Secured Obligations.

2.2 Subordination Upon Any Distribution of Assets of the Subordinated Parties. As to each Subordinated Party, in the event of any payment or distribution of assets of any other Subordinated Party of any kind or character, whether in cash, property, or securities, upon the dissolution, winding up, or total or partial liquidation or reorganization, readjustment, arrangement, or similar proceeding relating to such other Subordinated Party or its property, whether voluntary or involuntary, or in an Insolvency Proceeding, or upon any other marshaling or composition of the assets and liabilities of such other Subordinated Party (such events, collectively, "Insolvency Events" and such payment or distributions upon any Insolvency Event, collectively, "Proceeds"):

(a) all amounts owing on account of the Secured Obligations shall first be paid in full (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement) before any Subordinated Debt Payment is made from any Proceeds; and

(b) to the extent permitted by applicable law and by any court orders entered in connection with such Insolvency Events, any Subordinated Debt Payment from Proceeds which such Subordinated Party receives in contravention of the provisions hereof, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution directly to the Collateral Trustee (or its designee) for the benefit of the Secured Parties for application to the payment of the Secured Obligations in accordance with clause (a), after giving effect to any concurrent payment or distribution or provision therefor to the Secured Parties in respect of such Secured Obligations.

ARTICLE III
PAYMENTS ON SUBORDINATED DEBT

3.1 Permitted Payments on Indebtedness for Borrowed Money. To the extent not prohibited by the Arrangement Agreement and so long as no Event of Default shall have occurred and be continuing, each Subordinated Party may make, and each other Subordinated Party shall be entitled to accept and receive, payments when due and payable, and (to the extent permitted pursuant to the terms of the Arrangement Agreement) prepayments, in the ordinary course of business on account of the Subordinated Debt consisting of indebtedness for borrowed money.

3.2 No Payment on Indebtedness for Borrowed Money Upon Secured Obligations Defaults. Upon the occurrence of any Event of Default, and until such Default or Event of Default is cured or waived, no Subordinated Party shall make, and no other Subordinated Party shall accept or receive, any Subordinated Debt Payment in respect of Subordinated Debt consisting of indebtedness for borrowed money.

3.3 Permitted Payments on Other Subordinated Debt. Except as provided in Section 3.2 above, each Subordinated Party may make, and each other Subordinated Party shall be entitled to accept and receive, payments when due and payable, and (to the extent permitted pursuant to the terms of the Arrangement Agreement) prepayments, in the ordinary course of business on account of all other Subordinated Debt.

ARTICLE IV
SUBORDINATION OF REMEDIES

4.1 Subordination of Remedies. As long as any Secured Obligations shall remain outstanding and unpaid, no Subordinated Party shall, without the prior written consent of the Collateral Trustee:

(a) accelerate, make demand, or otherwise make due and payable prior to the original due date thereof any Subordinated Debt or bring suit or institute any other actions or proceedings to enforce its rights or interests in respect of the obligations of any other Subordinated Party owing to such Subordinated Party;

(b) exercise any rights under or with respect to guaranties of the Subordinated Debt, if any;

(c) exercise any rights to set-offs and counterclaims in respect of any indebtedness, liabilities, or obligations of such Subordinated Party to any other Subordinated Party against any of the Subordinated Debt; *provided* that a Subordinated Party may exercise a right of set-off in lieu of a Subordinated Debt Payment that would otherwise have been permitted under Article III; or

(d) commence, or cause to be commenced, or join with any creditor other than the Secured Parties in commencing, any Insolvency Proceeding or receivership proceeding against any other Subordinated Party.

ARTICLE V
COLLATERAL TRUSTEE

5.1 Payment Over to Collateral Trustee. In the event that, notwithstanding the provisions of Section 2.2 and Articles III and IV, any Subordinated Debt Payments shall be received in contravention of such Section 2.2 and Articles III and IV by any Subordinated Party before the date on which all Secured Obligations is paid in full (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement), such Subordinated Debt Payments shall be held in trust for the benefit of the Secured Parties and shall be paid over or delivered to the Collateral Trustee (or its designee) for the benefit of the Secured Parties for application to the payment in full of all Secured Obligations remaining unpaid (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement) to the extent necessary to give effect to such Section 2.2 and Articles III and IV, after giving effect to any concurrent payments or distributions to the Secured Parties in respect of the Secured Obligations.

5.2 Authorization to Collateral Trustee. If, while any Subordinated Debt is outstanding, any Insolvency Event shall occur and be continuing with respect to any Subordinated Party or its property:

(a) the Collateral Trustee hereby is irrevocably authorized and empowered (in the name of each Subordinated Party or otherwise), but shall have no obligation, to demand, sue for, collect, and receive every payment or distribution in respect of the Subordinated Debt and give acquittance therefor and to file claims and proofs of claim and take such other action (including, to the extent permitted under applicable law, voting the Subordinated Debt) as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of the Secured Parties; and

(b) each Subordinated Party shall promptly take such action as the Collateral Trustee reasonably may request (i) to collect the Subordinated Debt for the account of the Secured Parties and to file appropriate claims or proofs of claim in respect of the Subordinated Debt, (ii) to execute and deliver to the Collateral Trustee such powers of attorney, assignments, and other instruments as it may request to enable it to enforce any and all claims with respect to the Subordinated Debt, and (iii) to collect and receive any and all Subordinated Debt Payments.

ARTICLE VI
CERTAIN AGREEMENTS OF EACH SUBORDINATED PARTY

6.1 No Benefits. Each Subordinated Party understands that there may be various agreements between the Collateral Trustee or any other Secured Party and any other Subordinated Party evidencing and governing the Secured Obligations, and each Subordinated Party acknowledges and agrees that such agreements are not intended to confer any benefits on such Subordinated Party and that the Collateral Trustee nor any other Secured Party shall have any obligation to such Subordinated Party or any other Person to exercise any rights, enforce any remedies, or take any actions which may be available to it under such agreements.

6.2 No Interference. Each Subordinated Party acknowledges that each other Subordinated Party has granted to the Collateral Trustee for the benefit of the Secured Parties, a Lien on the Collateral of such Subordinated Party and agrees not to interfere with or in any manner oppose a disposition of any such Collateral by the Secured Parties in accordance with applicable law and the terms of the applicable Loan Documents.

6.3 Reliance by the Secured Parties. Each Subordinated Party acknowledges and agrees that the Secured Parties will have relied upon and will continue to rely upon the subordination provisions provided for herein and the other provisions hereof in entering into the Loan Documents and making the financial accommodations thereunder.

6.4 Waivers. Except as provided under the Arrangement Agreement, each Subordinated Party hereby waives (to the extent permitted by law) any and all notice of the incurrence of the Secured Obligations or any part thereof and any right to require marshaling of assets.

6.5 Obligations of Each Subordinated Party Not Affected. Each Subordinated Party hereby agrees that, subject to the terms and conditions of the Loan Documents, at any time and from time to time, without notice to or the consent of such Subordinated Party, without incurring responsibility to such Subordinated Party, and without impairing or releasing the subordination provided for herein or otherwise impairing the rights of the Secured Parties hereunder:

(a) the time for any other Subordinated Party's performance of or compliance with any of its agreements contained in the Loan Documents may be extended or such performance or compliance may be waived by the Secured Parties;

(b) the agreements of any other Subordinated Party with respect to the Loan Documents may from time to time be modified by such other Subordinated Party and the Secured Parties for the purpose of adding any requirements thereto or changing in any manner the rights and obligations of such other Subordinated Party or the Secured Parties thereunder;

(c) the manner, place, or terms for payment of Secured Obligations or any portion thereof may be altered or the terms for payment extended, or the Secured Obligations may be renewed in whole or in part in accordance with the terms of any present or future agreement by any other Subordinated Party and the Secured Parties;

(d) the maturity of the Secured Obligations may be accelerated in accordance with the terms of any present or future agreement by any other Subordinated Party and the Secured Parties;

(e) any Collateral may be sold, exchanged, released, or substituted in accordance with the terms of any present or future agreement by any other Subordinated Party and the Secured Parties and any Lien in favor of the Collateral Trustee may be terminated, subordinated, or fail to be perfected or become unperfected;

(f) any Person liable in any manner for Secured Obligations may be discharged, released, or substituted; and

(g) all other rights against any other Subordinated Party, any other Person, or with respect to any Collateral may be exercised (or the Secured Parties may waive or refrain from exercising such rights).

6.6 Rights of the Collateral Trustee and the Other Secured Parties Not to Be Impaired. No right of the Collateral Trustee or any other Secured Party to enforce the subordination provided for herein or to exercise its other rights hereunder shall at any time in any way be prejudiced or impaired by any act or failure to act by any Subordinated Party, the Collateral Trustee or any other Secured Party hereunder or under or in connection with any other Loan Document or by any noncompliance by any Subordinated Party with the terms and provisions and covenants herein or in any other Loan Document, regardless of any knowledge thereof the Collateral Trustee or any other Secured Party may have or otherwise be charged with.

6.7 Financial Condition of the Subordinated Parties. Except as provided under the Arrangement Agreement or any other Loan Document, no Subordinated Party shall have any right to require the Collateral Trustee or any other Secured Party to obtain or disclose any information with respect to: (a) the financial condition or character of any other Subordinated Party or the ability of any other Subordinated Party to pay and perform the Secured Obligations; (b) the Secured Obligations; (c) the Collateral or other security for any or all of the Secured Obligations; (d) the existence or nonexistence of any guarantees of, or any other subordination agreements with respect to, all or any part of the Secured Obligations; (e) any action or inaction on the part of the Collateral Trustee, any other Secured Party or any other Person; or (f) any other matter, fact, or occurrence whatsoever.

ARTICLE VII
SUBROGATION

7.1 Subrogation. Until the payment and performance in full of all Secured Obligations (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement), no Subordinated Party shall have, nor shall it directly or indirectly exercise, any rights that such Subordinated Party may acquire by way of subrogation under this Agreement, by any payment or distribution to the Secured Parties hereunder or otherwise. Upon the payment and performance in full of all Secured Obligations (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement), each Subordinated Party shall be subrogated to the rights of the Secured Parties to receive payments or distributions applicable to the Secured Obligations until the Subordinated Debt shall be paid in full. For the purposes of the foregoing subrogation, no payments or distributions to the Collateral Trustee or any other Secured Party of any cash, property, or securities to which any Subordinated Party would be entitled except for the provisions of Section 2.2 or Articles III or IV shall, as among such Subordinated Party, its creditors (other than the Secured Parties), and any other Subordinated Party, be deemed to be a payment by any other Subordinated Party to or on account of the Secured Obligations.

7.2 Payments Over to the Subordinated Parties. If any payment or distribution to which any Subordinated Party would otherwise have been entitled but for the provisions of Section 2.2 or Articles III or IV shall have been applied pursuant to the provisions of Section 2.2 or Articles III or IV to the payment of all amounts payable under the Secured Obligations, such Subordinated Party shall be entitled to receive from the Secured Parties any payments or distributions received by the Secured Parties in excess of the amount sufficient to pay in full all amounts payable under or in respect of the Secured Obligations (other than any unasserted contingent indemnity obligations under Section 12.8 of the Arrangement Agreement). If any such excess payment is made to the Secured Parties, the Secured Parties shall promptly remit such excess payment to such Subordinated Party and until so remitted shall hold such excess payment for the benefit of such Subordinated Party.

ARTICLE VIII
NO TRANSFER OF SUBORDINATED DEBT

No Subordinated Party may assign or transfer its rights and obligations in respect of the Subordinated Debt without the prior written consent of the Collateral Trustee, and any such assignment without the Collateral Trustee's prior written consent shall be null and void unless such transfer is otherwise permitted by the Arrangement Agreement. Any such transferee or assignee, as a condition to acquiring an interest in the Subordinated Debt shall agree to be bound hereby in a manner satisfactory to the Collateral Trustee.

ARTICLE IX
OBLIGATIONS OF THE SUBORDINATED PARTIES NOT AFFECTED

The provisions of this Agreement are intended solely for the purpose of defining the relative rights of each Subordinated Party against the other Subordinated Parties, on the one hand, and of the Secured Parties against the Subordinated Parties, on the other hand. Nothing contained in this Agreement shall (a) impair, as between each Subordinated Party and the other Subordinated Parties, the obligation of each other Subordinated Party to pay its respective obligations with respect to the Subordinated Debt as and when the same shall become due and payable, or (b) otherwise affect the relative rights of each Subordinated Party against the other Subordinated Parties, on the one hand, and of the creditors (other than the Secured Parties) of the other Subordinated Parties against the other Subordinated Parties, on the other hand.

ARTICLE X
ENDORSEMENT OF SUBORDINATED PARTY DOCUMENTS

At the request of the Collateral Trustee, all documents and instruments evidencing any of the Subordinated Debt, if any, shall be endorsed with a legend noting that such documents and instruments are subject to this Agreement, and each Subordinated Party shall promptly deliver to the Collateral Trustee evidence of the same.

ARTICLE XI
MISCELLANEOUS

11.1 Amendments, etc. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 6.1 of the Collateral Trust Agreement.

11.2 Delay and Waiver. No delay or omission in exercising any right, power, privilege or remedy under this Agreement or any other Loan Document, including any rights and remedies in connection with the occurrence of a Default or Event of Default shall impair any such right, power, privilege or remedy of the Collateral Trustee or the other Secured Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. All rights, powers, privileges and remedies, either under this Agreement or any other Loan Document or by law or otherwise afforded to any of the Collateral Trustee or the other Secured Parties, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that any of the Collateral Trustee or the other Secured Parties may otherwise have.

11.3 Survival of Representations and Warranties. All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Agreement and the making of the Advances under the Funding Agreements.

11.4 Notices. All notices, requests and demands to or upon the Collateral Trustee or any Subordinated Party hereunder shall be effected in the manner provided for in Section 6.3 of the Collateral Trust Agreement; *provided* that any such notice, request or demand to or upon any Additional Subordinated Party shall be addressed to such Subordinated Party at its notice address set forth on its Subsidiary Joinder Agreement, or, as to each party hereto, such other address or number as shall be designated by such party in a written notice to each other party hereto.

11.5 Severability.

(a) The holding by any court of competent jurisdiction that any remedy pursued by the Collateral Trustee or any other Secured Party hereunder is unavailable or unenforceable shall not affect in any way the ability of the Collateral Trustee or any other Secured Party to pursue any other remedy available to it. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement and shall not invalidate or render unenforceable any other provision hereof.

(b) In the event that DOE's consent is required under any of the Loan Documents, the determination whether to grant or withhold such consent shall be made by DOE in its sole discretion without any implied duty towards any other Person, except as otherwise expressly provided therein.

11.6 Judgment Currency. Each Subordinated Party agrees, to the fullest extent permitted under applicable law, to indemnify each Secured Party against any loss incurred by such Secured Party as a result of any judgment or order being given or made for any amount due such Secured Party under the Loan Documents and such judgment or order being expressed and to be paid in a Judgment Currency other than the Currency of Denomination and as a result of any variation between (i) the rate of exchange at which amounts in the Currency of Denomination are converted into Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange at which such Secured Party would have been able to purchase the Currency of Denomination with the amount of the Judgment Currency actually received by such Secured Party had it utilized the amount of Judgment Currency so received to purchase the Currency of Denomination as promptly as practicable upon receipt thereof. The foregoing indemnity shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant Currency of Denomination that are documented and reasonable in light of market conditions at the time of such conversion.

11.7 Indemnification.

(a) Each Subordinated Party, jointly and severally, agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting the Secured Obligations against the Subordinated Parties or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents, including the reasonable fees and other charges of counsel to each Secured Party.

(b) Each Subordinated Party, jointly and severally, agrees to pay, indemnify and hold each Secured Party harmless from and against any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay from the Subordinated Parties in paying, all stamp, excise, sales and other taxes that may be payable or determined to be payable in connection with any of the transactions contemplated by this Agreement and the other Loan Documents.

(c) Each Subordinated Party, jointly and severally, agrees to pay, indemnify and hold the Secured Parties and each other Indemnified Person harmless from and against any and all Indemnified Liabilities to the fullest extent as the Borrower would be required to do so pursuant to Section 12.8 of the Arrangement Agreement.

(d) The provisions of this Section 12.8 shall survive foreclosure under this Agreement and satisfaction or discharge of the Secured Obligations and termination of this Agreement, and shall be in addition to any other rights and remedies of any Indemnified Person.

11.8 Limitation on Liability. No claim shall be made by any Subordinated Party or any of its Affiliates against any Secured Party or any of their Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Loan Documents or any act or omission or event occurring in connection therewith; and each Subordinated Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

11.9 Successors and Assigns. This Agreement is a continuing agreement of subordination and shall remain in full force and effect until all Secured Obligations have been paid in full (other than unasserted contingent indemnity obligations, which shall nonetheless survive termination of this Agreement in accordance with Section 11.7) and all Loan Commitment Amounts have been reduced to zero, be binding upon each Subordinated Party, its successors and assigns, and inure, together with the rights and remedies of the Collateral Trustee hereunder, to the benefit of the Collateral Trustee and its successors and assigns. The subordinations, agreements and priorities set forth herein shall remain in full force and effect regardless of whether any Subordinated Party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its respective agreements with any other Subordinated Party.

11.10 Further Assurances and Corrective Instruments. To the extent permitted by Requirements of Law, each Subordinated Party hereto shall, upon the written request of the Collateral Trustee, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, within a reasonable period of such request, such amendments or supplements hereto, and such further instruments, and take such further actions, as may be necessary in such party's reasonable judgment to effectuate the intention, performance and provisions hereof.

11.11 Reinstatement. Where any discharge is made in whole or in part, or any arrangement is made on the faith of, any payment, security or other disposition which is avoided or must be repaid, whether upon the insolvency, bankruptcy, liquidation or other similar proceeding or otherwise pursuant to any applicable Requirements of Law, the liability of the Subordinated Parties under this Agreement shall continue as if there had been no such discharge or arrangement. The Secured Parties shall be entitled to concede or compromise any claim that any such payment, security or other disposition is liable to avoidance or repayment.

11.12 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

11.13 Submission to Jurisdiction, Etc.

(a) Any legal action or proceeding against any Subordinated Party with respect to or arising out of this Agreement may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Subordinated Party or any of its property may be found. By execution and delivery of this Agreement, each Subordinated Party accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Agreement. Each Subordinated Party hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of forum non-conveniens or improper venue. Each Subordinated Party agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) Each Subordinated Party hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 11.4 and that such mailing is sufficient to confer personal jurisdiction over such Subordinated Party in any proceeding in any court referred to in Section 11.13(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 11.13(b) shall affect the right of the Secured Parties to serve process in any other manner permitted by law.

11.14 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding, and supersede all prior agreements and understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

11.15 Benefits of Agreement. Nothing in this Agreement or any other Loan Document, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Agreement.

11.16 Headings. Paragraph headings have been inserted in the Loan Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Loan Documents and shall not be used in the interpretation of any provision of the Loan Documents.

11.17 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

11.18 No Partnership; Etc. The Secured Parties and the Subordinated Parties intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Secured Parties and the Subordinated Parties or any other Person. The Secured Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Subordinated Parties or any other Person with respect to the Projects or otherwise.

11.19 Independence of Covenants. All covenants under this Agreement and the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

11.20 Additional Subordinated Parties. Each Subsidiary of the Borrower that is required to become an Additional Guarantor pursuant to Section 7.6 of the Arrangement Agreement, or that the Borrower desires to become a party to this Agreement, shall become a Subordinated Party (an "Additional Subordinated Party") for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Subsidiary Joinder Agreement.

11.21 Releases. A Subordinated Party shall be released from its obligations hereunder in the event that the Guarantee of such Subordinated Party is released in accordance with the provisions of Section 12.21 of the Arrangement Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS AND HAVE BEEN TAKEN FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO OR FOR SALE IN CONNECTION WITH ANY DISTRIBUTION THEREOF. THE SECURITIES MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS AND, IN THE CASE OF A TRANSFER BY A HOLDER OTHER THAN THE UNITED STATES DEPARTMENT OF ENERGY OR A PERMITTED TRANSFEREE OF THE UNITED STATES DEPARTMENT OF ENERGY PURSUANT TO SECTION 11(c)(i) HEREOF, WITH AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT.

Date of Issuance
January 20, 2010

Void after
December 15, 2023 (or earlier pursuant to Section 8 hereof)

TESLA MOTORS, INC.
WARRANT TO PURCHASE SHARES OF PREFERRED STOCK

Pursuant to that certain Loan Arrangement and Reimbursement Agreement dated as of January 20, 2010 (the "Arrangement Agreement"), by and between Tesla Motors, Inc., a Delaware corporation (the "Company") and the United States Department of Energy or its permitted assigns (the "Holder"), this Warrant is issued to the Holder.

Capitalized terms not defined herein shall have the meaning set forth in the Arrangement Agreement.

1. **Purchase of Shares.**

(a) Number of Shares and Right to Exercise. Subject to the terms and conditions set forth herein, during the Quarterly Periods specified in the table below through the Expiration Date set forth in Section 8, the Holder is entitled, upon surrender of this Warrant (such date of surrender, the "Exercise Date") at the principal office of the Company (or at such other place as the Company shall notify the Holder in writing), to purchase from the Company up to a number of fully paid and nonassessable shares (the "Shares") of the Company's Series E Preferred Stock equal to (a) the sum of (i) the Incremental Shares (as determined below) for the Quarterly Period in which the Exercise Date occurs and each prior Quarterly Period or (ii) in the event the Exercise Date occurs after December 14, 2022, the Incremental Shares for all Quarterly Periods specified in the table below, less (b) the aggregate number of Shares for which this Warrant has been previously exercised. The number of Shares that become exercisable with respect to a Quarterly Period specified in the table below (the "Incremental Shares") shall be determined by multiplying (x) the Average Quarterly Principal Balance (as defined below) as of

the Calculation Date set forth opposite the relevant Quarterly Period by (y) 0.00726875, such number of Shares subject to adjustment pursuant to Section 7 hereof. "Average Quarterly Principal Balance" as of a Calculation Date means the sum of the principal balances of the Loans (as defined in the Arrangement Agreement) on each day during the three month period ending on such date (calculated after giving effect to the principal payment made, or with respect to future periods, scheduled to be made, on the first day of the period) divided by the number of days in that period.

Quarterly Period	Calculation Date
December 15, 2018 – March 14, 2019	December 14, 2018
March 15, 2019 – June 14, 2019	March 14, 2019
June 15, 2019 – September 14, 2019	June 14, 2019
September 15, 2019 – December 14, 2019	September 14, 2019
December 15, 2019 – March 14, 2020	December 14, 2019
March 15, 2020 – June 14, 2020	March 14, 2020
June 15, 2020 – September 14, 2020	June 14, 2020
September 15, 2020 – December 14, 2020	September 14, 2020
December 15, 2020 – March 14, 2021	December 14, 2020
March 15, 2021 – June 14, 2021	March 14, 2021
June 15, 2021 – September 14, 2021	June 14, 2021
September 15, 2021 – December 15, 2021	September 14, 2021
December 15, 2021 – March 14, 2022	December 14, 2021
March 15, 2022 – June 14, 2022	March 14, 2022
June 15, 2022 – September 14, 2022	June 14, 2022
September 15, 2022 – December 14, 2022	September 14, 2022

For the avoidance of doubt, examples of the calculations specified under this Section 1(a) are set forth on Exhibit A hereto.

(b) Notwithstanding the foregoing, if an Event of Default under the Loan Documents occurs which (x) arises from a Change of Control that the DOE has not consented to in writing if the Loans and all other Secured Obligations have not been repaid in full on or before the effective date of the Change of Control, or (y) is any other Event of Default

that has continued for a period of at least 90 days (the "90-Day Period") without being cured to the DOE's reasonable satisfaction or being waived by the DOE in its sole discretion, and the Loans and all other Secured Obligations having not been repaid in full, then this Warrant shall immediately become exercisable for (i) 9,255,035 Shares if such Event of Default occurs prior to December 15, 2018, or (ii) if such Event of Default occurs on or after December 15, 2018, the number of Shares that would be determined according to Section 1(a) as of December 15, 2023 as if no prepayments on the Loans were made after such Event of Default had occurred (but giving effect to any prepayments made prior to such date) (as such number of Shares may have been adjusted pursuant to Section 7 of this Warrant).

(c) Exercise Price. The purchase price for each Share issuable pursuant to this Section 1 shall be $2.5124. The number of Shares and the purchase price of each Share shall be subject to adjustment pursuant to Section 7 hereof. Such purchase price, as adjusted from time to time, is herein referred to as the "Exercise Price."

2. **Exercise Period.** This Warrant shall be exercisable, in whole or in part, at the times and to the extent set forth in Section 1 and prior to (or in connection with) the expiration of this Warrant as set forth in Section 8 (the "Exercise Period").

3. **Method of Exercise.**

(a) While this Warrant remains outstanding and exercisable in accordance with Sections 1 and 2 above, the Holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

(i) the surrender of the Warrant, together with a duly executed copy of the Notice of Exercise attached hereto, to the Secretary of the Company at its principal office (or at such other place as the Company shall notify the Holder in writing); and

(ii) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.

(b) Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant is surrendered to the Company as provided in Section 3(a) above; provided that the Holder may make any exercise of this Warrant in accordance with Section 3(a) subject to and effective upon the consummation of a Corporate Transaction (as defined in Section 5 below) or the Company's initial public offering. At such time, the person or persons in whose name or names any certificate for the Shares shall be issuable upon such exercise as provided in Section 3(c) below shall be deemed to have become the holder or holders of record of the Shares represented by such certificate.

(c) As soon as practicable after the exercise of this Warrant in whole or in part, the Company at its expense will cause to be issued in the name of, and delivered to, the Holder, or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of Shares to which such Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of Shares equal to the number of such Shares called for on the face of this Warrant minus the number of Shares purchased by the Holder upon all exercises made in accordance with Section 3(a) above or Section 4 below.

4. **Net Exercise.** In lieu of exercising this Warrant for cash, the Holder may elect to receive shares equal to the value of this Warrant (or the portion thereof being exercised) by surrender of this Warrant at the principal office of the Company together with notice of such election (a "Net Exercise"). A Holder who Net Exercises shall have the rights described in Sections 3(b) and 3(c) hereof, and the Company shall issue to such Holder a number of Shares computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

Where

X = The number of Shares to be issued to the Holder.

Y = The number of Shares purchasable under this Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being cancelled (at the date of such calculation).

A = The fair market value of one (1) Share (at the date of such calculation).

B = The Exercise Price (as adjusted to the date of such calculations).

For purposes of this Section 4, the fair market value of a Share shall mean the average of the closing price of the Shares (or equivalent shares of Common Stock underlying the Shares) quoted in the over-the-counter market in which the Shares (or equivalent shares of Common Stock underlying the Shares) are traded or the closing price quoted on any exchange or electronic securities market on which the Shares (or equivalent shares of Common Stock underlying the Warrants) are listed, whichever is applicable, as published in The Wall Street Journal for the thirty (30) trading days prior to the date of determination of fair market value (or such shorter period of time during which such Shares were traded over-the-counter or on such exchange). In the event that this Warrant is exercised pursuant to this Section 4 in connection with the Company's initial public offering, the fair market value per Share shall be the product of (a) the per share offering price to the public of the Company's initial public offering, and (b) the number of shares of Common Stock into which each Share is convertible at the time of such exercise or, if the Shares are shares of Common Stock, one. If the Shares are not traded on the over-the-counter market, an exchange or an electronic securities market, the fair market value shall be the price per Share that the Company could obtain from a willing buyer for Shares sold by the Company from authorized but unissued Shares, as such prices shall be determined in good faith by the Company's Board of Directors.

5. Exchange Right.

(a) In lieu of exercising this Warrant pursuant to Section 3 or Net Exercising it pursuant to Section 4, prior to the closing of a transaction deemed to be a liquidation pursuant to Article IV(B)(2)(c)(i) of the Company's Sixth Amended and Restated Certificate of Incorporation, as amended from time to time (a "Corporate Transaction"), by written notice to the acquiring entity (the "Acquiring Person") at least five (5) days before the date of closing of such Corporate Transaction, the Holder may assign, in whole or in part, this Warrant to the Acquiring Person and receive in exchange from the Acquiring Person immediately prior to such closing, without the payment by the Holder of any additional consideration, an amount and type of consideration equal to the amount and type of consideration that would have been payable by the Acquiring Person in the Corporate Transaction with respect to that number of Warrant Shares that would have been issuable had the portion of the Warrant that is so assigned pursuant to this Section 5 not been assigned but instead been Net Exercised pursuant to Section 4. The Company shall give the Holder written notice of a Corporate Transaction at least fifteen (15) days prior to the consummation of the Corporate Transaction.

(b) The type of consideration paid by the Acquiring Person for the portion of this Warrant that could be Net Exercised into one Share pursuant to Section 4 shall be the same type of consideration, whether stock, securities or other property, paid for one Share in the Corporate Transaction, or if more than one type of consideration is paid for one Share in the Corporate Transaction, the same types and on the same relative basis as is paid for one Share in the Corporate Transaction (assuming, in the case of a Corporate Transaction involving the sale or transfer of all or substantially all of its assets, that the consideration received by the Company is distributed to the stockholders of the Company on the date of closing of such sale or transfer).

6. Covenants of the Company.

(a) Notices of Record Date. In the event of any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a stock dividend) or other distribution, the Company shall mail to the Holder, at least ten (10) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(b) Covenants as to Exercise Shares. The Company covenants and agrees that all Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance in accordance with the terms hereof, be validly issued and outstanding, fully paid and nonassessable, and free from all taxes, liens and charges with respect to the issuance thereof. If at any time during the Exercise Period the number of authorized but unissued shares of Preferred Stock shall not be sufficient to permit exercise of this Warrant, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Preferred Stock to such number of shares as shall be sufficient for such purposes.

(c) No Impairment. Except and to the extent waived or consented to by the Holder, or as otherwise permitted under the terms hereof, the Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant (and, in the event that the Company issues Additional Stock as defined in Section 4(d)(i)(B) of Article IV(B) of the Company's Sixth Amended and Restated Certificate of Incorporation, as amended to date and as may be further amended from time to time (the "Restated Certificate"), which would result in a downward adjustment to the Conversion Price of the Series E Preferred Stock pursuant to Section 4(d)(i) of Article IV(B) of the Restated Certificate, then the Shares issuable upon exercise of this Warrant shall receive the benefit of such adjustment to the Conversion Price, as set forth in Section 7(d)(i) hereof) and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment, including, without limitation, the provisions contained in Section 7 hereof and Section 6(b) and Section 6(c) of Article IV(B) contained in the Restated Certificate, which provisions the Company represents have been duly complied with by the Company's stockholders in connection with the issuance of this Warrant.

7. **Adjustment of Exercise Price and Number of Shares.** The number and kind of Shares purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time after the issuance but prior to the expiration of this Warrant subdivide its Preferred Stock, by split-up or otherwise, or combine its Preferred Stock, or issue additional shares of its Preferred Stock or Common Stock as a dividend with respect to any shares of its Preferred Stock, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the Exercise Price payable per share, but the aggregate Exercise Price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 7(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. In case of any reclassification, capital reorganization or change in the capital stock of the Company (other than as a result of a subdivision, combination or stock dividend provided for in Section 7(a) above), then, as a condition of such reclassification, reorganization or change, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder, so that the Holder shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and other securities or property receivable in connection with such reclassification, reorganization or change by a holder of the same number and type of securities as were purchasable as Shares by the Holder immediately prior to such reclassification, reorganization or change. In any such case appropriate provisions shall be

made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities or property deliverable upon exercise hereof, and appropriate adjustments shall be made to the Exercise Price per Share payable hereunder, provided the aggregate Exercise Price shall remain the same.

(c) Conversion of Preferred Stock. In the event that all outstanding shares of Preferred Stock are converted to Common Stock, or any other security, in accordance with the terms of the Company's Sixth Amended and Restated Certificate of Incorporation (as amended from time to time) in connection with the Company's initial public offering, a Corporate Transaction or other event, this Warrant shall become exercisable for Common Stock or such other security at the same price per share that the Shares were converted into Common Stock or such other security.

(d) Other Adjustments.

(i) It is hereby acknowledged that the Holder shall be entitled to the benefit of all adjustments in the number of shares of Common Stock of the Company issuable upon conversion of the Shares, as a result of any issuance of securities or any splits, recapitalizations, combinations or other similar transaction affecting the Common Stock underlying the Shares or any other event resulting in an adjustment provided to any other holder of Series E Preferred Stock that occurs prior to the exercise of this Warrant as provided in the Company's Sixth Amended and Restated Certificate of Incorporation (as amended from time to time).

(ii) If an Event of Default under clause (y) of Section 1(b)(i) occurs, and if the Company makes a dividend or distribution on its Common Stock or its Series E Preferred Stock during the 90-Day Period that is not already adjusted for pursuant to Sections 7(a)-(d)(i) hereof or the Company's Sixth Amended and Restated Certificate of Incorporation (as amended from time to time), as applicable, or if for any other reason there is a decline in the value of the Company's Common Stock or Series E Preferred Stock during the 90-Day Period, the number of Shares purchasable upon exercise of this Warrant shall be adjusted such that immediately following such adjustment, the value of the Shares issuable upon full exercise of this Warrant at such time shall be no less than the value of the Shares issuable upon full exercise of this Warrant on the first day of the 90-Day Period (for the purposes of determining such value, if this Warrant is then exercisable for Series E Preferred Stock, it shall be assumed that this Warrant was exercised for Series E Preferred Stock, such shares of Series E Preferred Stock were immediately converted into Common Stock at the then-effective conversion rate for such shares, and all such shares of Common Stock were immediately sold on that day); provided that no such adjustment shall be made to the extent it would result in a decrease in value to the Holder from what such value would have been in the absence of such adjustment).

(e) Notice of Adjustment. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the Holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

8. Expiration of Warrant. This Warrant shall expire and shall no longer be exercisable as of the earlier of (the "Expiration Date"):

(a) 5:00 p.m., Pacific time, on December 15, 2023; or

(b) if the Loans and all other obligations under the Loan Documents are paid in full prior to December 15, 2018, the date of such prepayment in full.

9. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment for the value of such fractional share on the basis of the Exercise Price then in effect.

10. No Stockholder Rights. Prior to exercise of this Warrant, the Holder shall not be entitled to any rights of a stockholder with respect to the Shares, including (without limitation) the right to vote such Shares, receive dividends or other distributions thereon, exercise preemptive rights or be notified of stockholder meetings, and except as otherwise provided in this Warrant or the Arrangement Agreement, such Holder shall not be entitled to any stockholder notice or other communication concerning the business or affairs of the Company. When this Warrant is exercised into Shares, the holder of such Shares shall be entitled to all of the rights, and shall be subject to the obligations, generally applicable to holders of the Shares. Notwithstanding the foregoing, nothing contained in this Section 10 shall limit the provisions of Section 7(d)(i).

11. Additional Agreements.

(a) Purchase for Investment. The Holder acknowledges that the Securities have not been registered under the 1933 Act or under any state securities laws. The Holder (i) is acquiring the Warrant pursuant to an exemption from registration under the 1933 Act solely for investment with no present intention to distribute them to any person in violation of the 1933 Act or any applicable U.S. state securities laws, (ii) will not sell or otherwise dispose of the Securities, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws, and (iii) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the purchase and of making an informed investment decision.

(b) Legends.

(i) The Holder agrees that all certificates or other instruments representing the Warrant and the Shares (collectively, the "Securities") shall bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS AND HAVE BEEN TAKEN FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO OR FOR SALE IN CONNECTION WITH ANY DISTRIBUTION THEREOF. THE SECURITIES MAY NOT BE

TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS AND, IN THE CASE OF A TRANSFER BY A HOLDER OTHER THAN THE UNITED STATES DEPARTMENT OF ENERGY OR A PERMITTED TRANSFEREE OF THE UNITED STATES DEPARTMENT OF ENERGY PURSUANT TO SECTION 11(c)(i) HEREOF, WITH AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT."

(ii) The Holder agrees that all certificates or other instruments representing the Warrant will also bear a legend substantially to the following effect:

"THIS INSTRUMENT IS ISSUED SUBJECT TO THE PROVISIONS OF A WARRANT AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER."

(iii) In the event that any Shares (x) become registered under the Securities Act or (y) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Shares, which shall not contain the applicable legend in Section 11(b)(i) above; provided that the Holder surrenders to the Company the previously issued certificates or other instruments. Upon transfer of all or a portion of the Warrant in compliance with Section 11(c) below, the Company shall issue new certificates or other instruments representing the Warrant, which shall contain the applicable legends in this Section 11(b) above; provided that the Holder surrenders to the Company the previously issued certificates or other instruments.

(c) Transfer of Warrant. Subject to compliance with applicable federal and state securities laws, this Warrant and all rights hereunder are transferable as follows:

(i) on or prior to December 15, 2018, in whole or in part, at any time by the Holder to any other federal agency of the United States government upon prior written notice of the Company; and

(ii) after December 15, 2018, in whole or in part, at any time by the Holder to any other person or entity upon prior written notice to the Company.

Within a reasonable time after the Company's receipt of an executed Assignment Form in the form attached hereto, the transfer shall be recorded on the books of the Company upon the surrender of this Warrant, properly endorsed, to the Company at its principal offices, and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. In the event of a partial transfer, the Company shall issue to the new holders one or more appropriate new warrants. Each holder of Securities and each subsequent transferee consents to the Company making a notation on its records and giving instructions to any transfer agent of the Securities in order to implement the restrictions on transfer established in this Section 11.

12. **Governing Law.** THIS WARRANT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, FEDERAL LAW AND NOT THE LAW OF ANY STATE OR LOCALITY. TO THE EXTENT THAT A COURT LOOKS TO THE LAWS OF ANY STATE TO DETERMINE OR DEFINE THE FEDERAL LAW, IT IS THE INTENTION OF THE PARTIES HERETO THAT SUCH COURT SHALL LOOK ONLY TO THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS.

13. **Successors and Assigns.** The terms and provisions of this Warrant shall inure to the benefit of, and be binding upon, the Company and the holders hereof and their respective successors and assigns.

14. **Titles and Subtitles.** The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

15. **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the following addresses (or at such other addresses as shall be specified by notice given in accordance with this Section 15):

If to the Company:

TESLA MOTORS, INC.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Executive Officer

If to Holders:

At the addresses shown on the signature pages hereto.

16. **Replacement**. Upon receipt of evidence reasonably satisfactory to the Company (as affidavit of the Holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of the document evidencing this Warrant, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is a financial institution or investment fund, its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such document, the Company shall (at its expense) execute and deliver in lieu of such document a new document of like kind representing the same rights represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated document.

17. **Amendments and Waivers.** Any term of this Warrant may be amended or waived only by written instrument or written instruments signed by the Company and the Holder.

18. **Waiver of Jury Trial.** THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS WARRANT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

19. **Submission to Jurisdiction**. Any legal action or proceeding against the Company with respect to or arising out of Warrant may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Company or any of its property may be found. By execution and delivery of this Warrant, the Company accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Warrant. The Company hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under or in connection with this Warrant brought before the foregoing courts on the basis of forum non-conveniens or improper venue. The Company agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

20. **Severability**. If any provision of this Warrant is held to be unenforceable under applicable law, such provision shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Warrant as of the date above written.

TESLA MOTORS, INC.

By: _____
Name: Elon Musk
Title: Chief Executive Officer

Address:
1050 Bing Street
San Carlos, CA 94070

ACKNOWLEDGED AND AGREED:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name: _____
Title: _____

Address:
Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

IN WITNESS WHEREOF, the parties have executed this Warrant as of the date above written.

TESLA MOTORS, INC.

By: _____
Name: Elon Musk
Title: Chief Executive Officer

Address:
1050 Bing Street
San Carlos, CA 94070

ACKNOWLEDGED AND AGREED:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name: LACHLAN W SEWARD
Title: DIRECTOR, ATVM LOAN PROGRAM

Address:
Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Exhibit A
Tesla Motors Inc.
DoE Warrant
Vesting Schedule

Example #1 : No Prepayments

Tranche	Period	Calculation Date	Loan Outstanding - Beginning of Period	Repayment (1)	Voluntary Prepayment (2)	Loan Outstanding - End of Period	Average Quarterly Balance of Prior Q	Coverage Ratio	Vesting Schedule (Shares) (3)
Loan Repayment Balance Before Start of Warrant Vesting									
	September 15, 2018 - December 14, 2018		$ 172,710	$ (12,710)	$ -	$ 159,999			
Start of Warrant Vest									
Tranche 1	December 15, 2018 – March 14, 2019	14-Dec-18	$ 159,999	$ (12,710)		$ 147,289	$ 159,999	0 007268750	1 162,995
Tranche 2	March 15, 2019 – June 14, 2019	14-Mar-19	147,289	(12,710)		134,579	147,289	0 007268750	1,070,607
Tranche 3	June 15, 2019 – September 14, 2019	14-Jun-19	134,579	(12,710)		121,868	134,579	0 007268750	978,219
Tranche 4	September 15, 2019 – December 14, 2019	14-Sep-19	121,868	(12,710)		109,158	121,868	0 007268750	885,831
Tranche 5	December 15, 2019 – March 14, 2020	14-Dec-19	109,158	(9,097)		100,062	109,158	0 007268750	793,443
Tranche 6	March 15, 2020 – June 14, 2020	14-Mar-20	100,062	(9,097)		90,965	100,062	0 007268750	727,323
Tranche 7	June 15, 2020 – September 14, 2020	14-Jun-20	90,965	(9,097)		81,869	90,965	0 007268750	661,203
Tranche 8	September 15, 2020 – December 14, 2020	14-Sep-20	81,869	(9,097)		72,772	81,869	0 007268750	595,083
Tranche 9	December 15, 2020 – March 14, 2021	14-Dec-20	72,772	(9,097)		63,676	72,772	0 007268750	528,962
Tranche 10	March 15, 2021 – June 14, 2021	14-Mar-21	63,676	(9,097)		54,579	63,676	0 007268750	462,842
Tranche 11	June 15, 2021 – September 14, 2021	14-Jun-21	54,579	(9,097)		45,483	54,579	0 007268750	396,722
Tranche 12	September 15, 2021 – December 15, 2021	14-Sep-21	45,483	(9,097)		36,386	45,483	0 007268750	330,601
Tranche 13	December 15, 2021 – March 14, 2022	14-Dec-21	36,386	(9,097)		27,290	36,386	0 007268750	264,481
Tranche 14	March 15, 2022 – June 14, 2022	14-Mar-22	27,290	(9,097)		18,193	27,290	0 007268750	198,361
Tranche 15	June 15, 2022 – September 14, 2022	14-Jun-22	18,193	(9,097)		9,097	18,193	0 007268750	132,241
Tranche 16	September 15, 2022 – December 14, 2022	14-Sep-22	9,097	(9,097)		0	9,097	0 007268750	66,121
Total									**9,255,035**

Example 2 : Partial Prepayment

Tranche	Period	Calculation Date	Loan Outstanding - Beginning of Period	Repayment (1)	Voluntary Prepayment (2)	Loan Outstanding - End of Period	Average Quarterly Balance of Prior Q	Coverage Ratio	Vesting Schedule (Shares) (3)
Loan Repayment Balance Before Start of Warrant Vesting									
	September 15, 2018 - December 14, 2018		$ 172,710	$ (12,710)	$ -	$ 159,999			
Start of Warrant Vest									
Tranche 1	December 15, 2018 – March 14, 2019	14-Dec-18	$ 159,999	$ (12,710)		$ 147,289	$ 159,999	0 007268750	1,162,995
Tranche 2	March 15, 2019 – June 14, 2019	14-Mar-19	147,289	(12,710)	(10,000)	124,579	147,289	0 007268750	1,070,607
Tranche 3	June 15, 2019 – September 14, 2019	14-Jun-19	124,579	(12,710)		111,868	129,579	0 007268750	941,875
Tranche 4	September 15, 2019 – December 14, 2019	14-Sep-19	111,868	(12,710)		99,158	111,868	0 007268750	813,144
Tranche 5	December 15, 2019 – March 14, 2020	14-Dec-19	99,158	(9,097)		90,062	99,158	0 007268750	720,756
Tranche 6	March 15, 2020 – June 14, 2020	14-Mar-20	90,062	(9,097)		80,965	90,062	0 007268750	654,635
Tranche 7	June 15, 2020 – September 14, 2020	14-Jun-20	80,965	(9,097)	(5,000)	66,869	80,965	0 007268750	568,515
Tranche 8	September 15, 2020 – December 14, 2020	14-Sep-20	66,869	(9,097)		57,772	69,369	0 007268750	504,224
Tranche 9	December 15, 2020 – March 14, 2021	14-Dec-20	57,772	(9,097)		48,676	57,772	0 007268750	419,931
Tranche 10	March 15, 2021 – June 14, 2021	14-Mar-21	48,676	(9,097)		39,579	48,676	0 007268750	353,811
Tranche 11	June 15, 2021 – September 14, 2021	14-Jun-21	39,579	(9,097)		30,483	39,579	0 007268750	287,690
Tranche 12	September 15, 2021 – December 15, 2021	14-Sep-21	30,483	(9,097)		21,386	30,483	0 007268750	221,570
Tranche 13	December 15, 2021 – March 14, 2022	14-Dec-21	21,386	(9,097)		12,290	21,386	0 007268750	155,450
Tranche 14	March 15, 2022 – June 14, 2022	14-Mar-22	12,290	(9,097)		3,193	12,290	0 007268750	89,330
Tranche 15	June 15, 2022 – September 14, 2022	14-Jun-22	3,193	(3,193)		-	3,193	0 007268750	23,209
Tranche 16	September 15, 2022 – December 14, 2022	14-Sep-22	-	-		-	-	0 007268750	-
Total									**8,007,742**

Example 3 : Full Prepayment (4)

Tranche	Period	Calculation Date	Loan Outstanding - Beginning of Period	Repayment (1)	Voluntary Prepayment (2)	Loan Outstanding - End of Period	Average Quarterly Balance of Prior Q	Coverage Ratio	Vesting Schedule (Shares) (3)
Loan Repayment Balance Before Start of Warrant Vesting									
	September 15, 2018 - December 14, 2018		$ 172,710	$ (12,710)	$ (159,999)	$ -			
Start of Warrant Vest									
Tranche 1	December 15, 2018 – March 14, 2019	14-Dec-18	$ -	$ -		$ -	$ (0)	0 007268750	-
Tranche 2	March 15, 2019 – June 14, 2019	14-Mar-19	-	-		-	-	0 007268750	-
Tranche 3	June 15, 2019 – September 14, 2019	14-Jun-19	-	-		-	-	0 007268750	-
Tranche 4	September 15, 2019 – December 14, 2019	14-Sep-19	-	-		-	-	0 007268750	-
Tranche 5	December 15, 2019 – March 14, 2020	14-Dec-19	-	-		-	-	0 007268750	-
Tranche 6	March 15, 2020 – June 14, 2020	14-Mar-20	-	-		-	-	0 007268750	-
Tranche 7	June 15, 2020 – September 14, 2020	14-Jun-20	-	-		-	-	0 007268750	-
Tranche 8	September 15, 2020 – December 14, 2020	14-Sep-20	-	-		-	-	0 007268750	-
Tranche 9	December 15, 2020 – March 14, 2021	14-Dec-20	-	-		-	-	0 007268750	-
Tranche 10	March 15, 2021 – June 14, 2021	14-Mar-21	-	-		-	-	0 007268750	-
Tranche 11	June 15, 2021 – September 14, 2021	14-Jun-21	-	-		-	-	0 007268750	-
Tranche 12	September 15, 2021 – December 15, 2021	14-Sep-21	-	-		-	-	0 007268750	-
Tranche 13	December 15, 2021 – March 14, 2022	14-Dec-21	-	-		-	-	0 007268750	-
Tranche 14	March 15, 2022 – June 14, 2022	14-Mar-22	-	-		-	-	0 007268750	-
Tranche 15	June 15, 2022 – September 14, 2022	14-Jun-22	-	-		-	-	0 007268750	-
Tranche 16	September 15, 2022 – December 14, 2022	14-Sep-22	-	-		-	-	0 007268750	-
Total									**-**

(1) Formula assumes loan repayments are made on the first day of the period
(2) Formula assumes voluntary prepayments are made at the midpoint of the period
(3) Warrant vests on the first day of the period
(4) Since the warrant is paid in full prior to December 15, 2018 and therefore expires according to its terms, the average calculation is not required

NOTICE OF EXERCISE

TESLA MOTORS, INC.
Attention: Corporate Secretary

The undersigned hereby elects to purchase, pursuant to the provisions of the Warrant, as follows:

____ _____ shares of Preferred Stock pursuant to the terms of the attached Warrant, and tenders herewith payment in cash of the Exercise Price of such Shares in full, together with all applicable transfer taxes, if any.

____ Net Exercise the attached Warrant with respect to _____ Shares.

The undersigned hereby represents and warrants that Representations and Warranties in Section 6 of the Purchase Agreement are true and correct as of the date hereof.

HOLDER:

Date:_____ By: _____

Address: _____
_____

Name in which shares should be registered:

_____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute
this form and supply required information.
Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant. Officers of corporations and those acting in a fiduciary or other representative capacity should provide proper evidence of authority to assign the foregoing Warrant.

TESLA MOTORS, INC.

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made as of January 20, 2010, by and between Tesla Motors, Inc., a Delaware corporation (the "Company") and the United States Department of Energy ("DOE").

RECITALS

A. The Company and the DOE have entered into a Loan Arrangement and Reimbursement Agreement (the "Arrangement Agreement") of even date herewith pursuant to which the Company shall issue the DOE a warrant to purchase up to 9,255,035 shares of Series E Preferred Stock (the "Warrant").

B. A condition to the DOE's obligations under the Arrangement Agreement is that the Company enter into this Agreement to grant the DOE certain rights to register shares of the Company's Common Stock issuable upon conversion of Series E Preferred Stock issuable upon exercise of the Warrant.

C. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Arrangement Agreement.

AGREEMENT

1. **Registration Rights.** The Company and the DOE covenant and agree as follows:

1.1 **Definitions.** For purposes of this Agreement:

(a) The term "Holder" means any person owning or having the rights to acquire Registrable Securities or any assignee thereof in accordance with Section 1.13 of this Agreement;

(b) The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act of 1933, as amended (the "Securities Act"), and the declaration or ordering of effectiveness of such registration statement or document;

(c) The term "Registrable Securities" means (i) the shares of Common Stock issuable or issued upon conversion of the Series E Preferred Stock issued or issuable upon exercise of the Warrant (such shares of Common Stock issuable upon exercise and/or conversion of the Warrant, the "Warrant Shares"), and (ii) any other shares of Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares listed in (i) and (ii); provided, however, that a given Warrant Share

shall not be a Registrable Security hereunder until such time as a given share of Series E Preferred Stock (or the underlying share(s) of Common Stock if the Series E Preferred Stock has converted into Common Stock) become exercisable pursuant to the terms of the Warrant; and provided further, however, that the foregoing definition shall exclude in all cases any Registrable Securities sold by a person in a transaction in which his or her rights under this Agreement are not assigned. Notwithstanding the foregoing, Common Stock or other securities shall only be treated as Registrable Securities if and so long as they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction;

(d) The number of shares of "Registrable Securities then outstanding" shall be determined by the number of shares of Common Stock outstanding which are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities which are, Registrable Securities;

(e) The term "Form S-3" means such form under the Securities Act as in effect on the date hereof or any successor form under the Securities Act that permits incorporation by reference of the Company's subsequent public filings under the Securities Exchange Act of 1934, as amended; and

(f) The term "SEC" means the Securities and Exchange Commission.

1.2 **Request for Registration.**

(a) If the Company shall receive at any time after the earlier of (i) the occurrence of an Event of Default under the Loan Documents (and all or any portion of the Warrant has vested) and (ii) six (6) months after the effective date of the first registration statement for a public offering of securities of the Company (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or an SEC Rule 145 transaction), a written request from the Holder that the Company file a registration statement under the Securities Act covering the resale of Registrable Securities with an anticipated aggregate offering price of at least $10,000,000, then the Company shall, subject to the limitations of subsection 1.2(b), use its best efforts to effect as soon as practicable, and in any event within sixty (60) days of the receipt of such request, the registration of the resale under the Securities Act of all Registrable Securities which the Holder has requested to be registered.

(b) If the Holder intends to distribute the Registrable Securities covered by its request by means of an underwriting, it shall so advise the Company as a part of its request made pursuant to this Section 1.2. The underwriter will be selected by the Company and shall be reasonably acceptable to the Holder. In such event, the right of the Holder to include its Registrable Securities in such registration shall be conditioned upon the Holder's participation in such underwriting and the inclusion of the Holder's Registrable Securities in the underwriting to the extent provided herein. Subject to Section 1.6(e), the Holder and the Company shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting; provided, however, that if the Holder does not enter into such underwriting agreement and the Holder's shares are unable to be included in such offering, such

exclusion shall not be deemed to be a breach of the Company's obligations under this Section 1.2. Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Holder in writing that marketing factors require a limitation of the number of shares to be underwritten, then the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all holders of securities requesting registration thereof, including the Holder, as follows: (i) first, to include Registrable Securities requested to be registered by the Holder; (ii) second, to the Company, which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company; and (iii) third, to other holders of the Company's securities requesting inclusion in such registration.

(c) Notwithstanding the foregoing, if the Company shall furnish to the Holder a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer such filing for a period of not more than sixty (60) business days after receipt of the request of the Holder; provided, however, that the Company may not utilize this right more than once in any twenty-four (24) month period and provided further that the Company shall not register any securities for the account of itself or any other stockholder during such sixty (60) business day period (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Securities Act, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered).

(d) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 1.2:

(i) After the Company has effected two (2) registrations pursuant to this Section 1.2 and such registrations have been declared or ordered effective;

(ii) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration subject to Section 1.3 hereof; provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective; or

(iii) If the Holder proposes to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 1.4 below.

1.3 **Company Registration.** If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company

for stockholders other than the Holder) any of its stock under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to the sale of securities to participants in a Company stock plan or a transaction covered by Rule 145 under the Securities Act, a registration in which the only stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered, or any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities), the Company shall, at such time, promptly give the Holder written notice of such registration. Upon the written request of the Holder given within twenty (20) business days after mailing of such notice by the Company in accordance with Section 2.3, the Company shall, subject to the provisions of Section 1.9, cause to be registered under the Securities Act all of the Registrable Securities that the Holder has requested to be registered.

1.4 **Form S-3 Registration.** If and when the Company is eligible to effect a registration statement on Form S-3 and the Company shall have received from the Holder a written request that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by the Holder, the Company will, as soon as practicable, effect such registration and all such qualifications and compliances as may be so required or so requested and as would permit or facilitate the sale and distribution of all or such lesser portion of the Holder's Registrable Securities as are specified in such request, it being understood that all Registrable Securities shall be included in such registration unless otherwise specified in writing by the Holder; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 1.4: (i) if Form S-3 is not available for such offering by the Holder; (ii) if the Holder, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $1,000,000; (iii) if the Company shall furnish to the Holder a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than sixty (60) days after the date specified in clause (i) of this Section 1.4 or if any, receipt of the request of the Holder under this Section 1.4; provided, however, that the Company shall not utilize this right more than once in any twenty-four (24) month period and provided further that the Company shall not register any securities for the account of itself or any other stockholder during such sixty (60) day period (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Securities Act, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered); or (iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(a) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request of the Holder. Registrations effected pursuant to this Section 1.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 1.2 or 1.3, respectively.

1.5 **Underwritten Offering.** If the registration referred to in Section 1.2, Section 1.3 or Section 1.4 is proposed to be underwritten, the Company will so notify the Holder in writing and all other persons having similar rights. Each such stockholder will (together with the Holder and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company; provided that the DOE and any permitted transferee pursuant to Section 11(c)(i) of the Warrant (as opposed to other stockholders) shall not be required to indemnify any person in connection with any registration or to make any representations and warranties. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriters and the DOE (if the DOE is participating in the underwriting). Notwithstanding the foregoing, that if the Holder does not enter into such underwriting agreement and the Holder's shares are unable to be included in such offering, such exclusion shall not be deemed to be a breach of the Company's obligations under Section 1.2, Section 1.3 or Section 1.4.

1.6 **Obligations of the Company.** Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, and, upon the request of the Holder, keep such registration statement effective for up to three hundred sixty five (365) days.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holder such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by it.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holder, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter or underwriters of such offering. If participating in such underwriting (whether pursuant to Section 1.1, Section 1.2 or Section 1.3), the Holder shall also enter into and perform its obligations under such an agreement; provided, however, the DOE and any permitted transferee pursuant to Section 11(c)(i) of the Warrant (as opposed to other stockholders) shall not be required to indemnify any person or make any representations and warranties.

(f) Notify the Holder at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing; provided, however, the Holder may reasonably request the Company to prepare a supplement or post effective amendment to such registration statement and prospectus in order to correct such misstatement or omission.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed, including preparing necessary listing applications and providing any information reasonably requested by such securities exchange in connection therewith.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Use its best efforts to furnish, at the request of the Holder, on the date that the registration statement with respect to such securities becomes effective and on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion (dated the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective), of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holder and (ii) a letter, dated as of each of such applicable dates, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holder.

(j) Permit the Holder (along with the Holder's underwriters, attorneys and accountants) to participate in the preparation of such registration statement and to require the

insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of the Holder and its counsel and counsel for the Company should be included.

(k) Cause senior representatives of the Company to participate in any "road show" or "road shows" reasonably requested by any underwriter of an underwritten or "best efforts" offering of any Registrable Securities.

(l) Promptly make available for inspection by the Holder, any underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the Holder, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith.

1.7 **Furnish Information.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of the Holder that the Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of the Holder's Registrable Securities. The Company shall have no obligation with respect to any registration requested pursuant to Section 1.2 or Section 1.4 of this Agreement if, as a result of the application of the preceding sentence, the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in subsection 1.2(a) or subsection 1.4(b)(2), whichever is applicable.

1.8 **Expenses of Registration.**

(a) **Demand Registration.** All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Section 1.2, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one counsel for the Holder selected by it with the approval of the Company, which approval shall not be unreasonably withheld, shall be borne by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 if the registration request is subsequently withdrawn at the request of the Holder; provided further, however, that if at the time of such withdrawal, the Holder has learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holder at the time of its request and have withdrawn the request with reasonable promptness following disclosure by the Company of such material adverse change, then the Holder shall not be required to pay any of such expenses and shall retain its rights pursuant to Section 1.2.

(b) **Company Registration.** All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications of Registrable Securities pursuant to Section 1.3 for the Holder (which right may be assigned as provided in Section 1.13), including (without limitation) all registration, filing, and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the Holder selected by it with the approval of the Company, which approval shall not be unreasonably withheld, shall be borne by the Company.

(c) **Registration on Form S-3.** All expenses other than underwriting discounts and commissions incurred in connection with a registration requested pursuant to Section 1.4, including (without limitation) all registration, filing, qualification, printers' and accounting fees and the reasonable fees and disbursements of one counsel for the Holder selected by it with the approval of the Company, which approval shall not be unreasonably withheld, and counsel for the Company, shall be borne by the Company.

1.9 **Underwriting Requirements.** In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under Section 1.3 to include any of the Holder's securities in such underwriting unless it accepts the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company; provided, that in no event shall the DOE or any permitted transferee pursuant to Section 11(c)(i) of the Warrant be required to indemnify any person or make any representations and warranties. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned in the same manner as provided in Section 1.2(b) or in such other proportions as shall mutually be agreed to by all such selling stockholders) but in no event shall (i) the amount of securities of the Holder included in the offering be reduced below thirty percent (30%) of the total amount of securities included in such offering (or such lesser percentage so long as all Registrable Securities held by the Holder requested to be included in the offering are so included), unless such offering is the initial public offering of the Company's securities, in which case, the Holder may be excluded only if the underwriters make the determination described above and no other stockholder's securities are excluded or (ii) any securities held by a Founder be included if any securities held by any selling Holder are excluded. For purposes of this Section 1.9, "Founder" shall be abscribed the meaning set forth in Section 1.1(h) of the Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, by and among the Company, and certain stockholders of the Company, as may be further amended from time to time (the "Investors' Rights Agreement").

1.10 **Delay of Registration.** The Holder shall not have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any

controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.11 **Indemnification.** In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless the Holder, any underwriter (as defined in the Securities Act) for the Holder and each person, if any, who controls the Holder or underwriter within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and each officer, director, partner or member of any of the foregoing against any expenses, judgments, losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such expenses, judgments, losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in any prospectus, offering circular or other document (including any related registration statement, notification or the like) incident to any such registration, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to the Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by it in connection with investigating or defending any such expenses, judgments, loss, claim, damage, liability, or action; provided, however, that, so long as the Company is defending in good faith against any such loss, claim, damage, liability or action, the indemnity agreement contained in this subsection 1.11(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable to the Holder, underwriter or controlling person for any such expense, judgment, loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by the Holder, underwriter or controlling person.

(b) To the extent permitted by law, the Holder (except the DOE and any permitted transferee pursuant to Section 11(c)(i) of the Warrant) will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other person selling securities in such registration statement and any controlling person of any such underwriter or other person, against any expenses, judgments, losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such expenses, judgments, losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished

by such Holder expressly for use in connection with such registration; and the Holder (except the DOE and any permitted transferee pursuant to Section 11(c)(i) of the Warrant) will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this subsection 1.10(b), in connection with investigating or defending any such expense, judgment, loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 1.10(b) shall not apply to amounts paid in settlement of any such expense, judgment, loss, claim, damage, liability or action if such settlement is effected without the consent of such Holder, which consent shall not be unreasonably withheld; provided, that in no event shall any indemnity under this subsection 1.10(b) exceed the net proceeds from the offering received by such Holder, except in the case of fraud by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.11 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.11, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the reasonable fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall, to the extent of any such prejudice, relieve such indemnifying party of any liability to the indemnified party under this Section 1.11, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.11.

(d) If the indemnification provided for in this Section 1.11 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; provided, that in no event shall any contribution by the Holder (except the DOE and any permitted transferee pursuant to Section 11(c)(i) of the Warrant), when combined with any amounts paid by such Holder pursuant to subsection 1.10(b) exceed the net proceeds from the offering received by such Holder, except in the case of fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by

the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control with respect to the Company and such underwriters.

(f) The obligations of the Company and the Holder under this Section 1.11 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.12 **Reports Under Securities Exchange Act of 1934.** With a view to making available to the Holder the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit the Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after ninety (90) days after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public so long as the Company remains subject to the periodic reporting requirements under Sections 13 or 15(d) of the Exchange Act;

(b) take such action, including the voluntary registration of its Common Stock under Section 12 of the Exchange Act, as is necessary to enable the Holder to utilize Form S-3 for the sale of its Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to the Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing the Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

1.13 **Assignment of Registration Rights.** The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned, in whole or in part (but only with all related obligations), by the Holder to (i) a transferee or assignee of at least 250,000 shares of such securities (subject to adjustment for stock splits, stock dividends, reclassification, combinations, dilutive issuances, deemed issuances or the like), (ii) a transferee or assignee of all of such Registrable Securities held the Holder, if less than 250,000 shares (subject to adjustment for stock splits, stock dividends, reclassification, combinations, dilutive issuances, deemed issuances or the like); provided the Company is, within a reasonable time prior to such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; provided, further, that such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and, after such time as the Company has amended the Investors' Rights Agreement to provide that such transferee or assignee shall be treated as a "holder" for all purposes under the Investors' Rights Agreement, such transferee or assignee agrees (x) to be bound by the Investors' Rights Agreement and the Right of First Refusal Agreement (if then in effect), in each case dated as of August 31, 2009, by and among the Company and certain stockholders of the Company and (y) that its rights to cause the Company to register Registrable Securities will be governed by Section 1 of the Investors' Rights Agreement in lieu of its rights hereunder; provided, further that so long as the Company has not amended the Investors' Rights Agreement to include such transferee or assignee thereunder, such assignment shall be automatically effective and such transferee or assignee shall maintain its rights as a "Holder" for all purposes hereunder. The Company shall use its commercially reasonable efforts to cause the Investors' Rights Agreement to be amended in order to allow any such transferee or assignee to be treated as a "holder" for all purposes thereunder. For the purposes of determining the number of shares of Registrable Securities held by a transferee or assignee, the holdings of transferees and assignees of (x) a partnership who are partners or retired partners of such partnership or (y) a limited liability company who are members or retired members of such limited liability company (including immediate family members of such partners or members who acquire Registrable Securities by gift, will or intestate succession) or Affiliates (as defined in the Arrangement Agreement) of such members or retired members shall be aggregated together and with the partnership or limited liability company; provided that all assignees and transferees who would not qualify individually for assignment of registration rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under Section 1.

1.14 **Limitations on Subsequent Registration Rights.** From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holder, enter into any agreement with any holder or prospective holder of any securities of the Company which would allow such holder or prospective holder (a) to include such securities in any registration filed under Section 1.2 hereof, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of his securities will not reduce the amount of the Registrable Securities of the Holder which is included or (b) to make a demand registration which could result in such registration statement being declared effective prior to the earlier of either of the dates set forth in

subsection 1.2(a) or within one hundred twenty (120) days of the effective date of any registration effected pursuant to Section 1.2.

1.15 **"Market Stand-Off" Agreement.**

(a) **Market-Standoff Period; Agreement.** If the initial public offering of the Company's securities occurs on or after the initial vesting date of the Warrant, then in connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such offering of the Company's securities, the Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any equity securities of the Company, however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time not to exceed one hundred eighty (180) days (or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering in substantially the form attached hereto as Annex A, with such changes as the Holder and the underwriters may agree to. The foregoing provisions of this Section 1.15(a) shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Holder if all officers, directors and greater than one percent (1%) stockholders of the Company enter into similar agreements. The underwriters in connection with the public offering of the Company's securities are intended third-party beneficiaries of this Section 1.15(a) and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

(b) **Stop-Transfer Instructions.** In order to enforce the foregoing covenants, the Company may impose stop-transfer instructions with respect to the securities of the Holder; provided, that this provision shall only be enforceable against the Holder to the extent it is enforced by the Company with respect to the securities of every other stockholder subject to similar restrictions contained in the Investors' Rights Agreement.

1.16 **Termination of Registration Rights.** The Holder shall not be entitled to exercise any right provided for in this Section 1 (other than Section 1.11) after the later of (a) the date that is five (5) years following such time as Rule 144 (but not Rule 144A) or another similar exemption under the Securities Act is first available for the sale of all of the Holder's Registrable Securities during a three (3) month period without registration, and (b) the date that is two (2) years following such time as the shares subject to purchase under the Warrant have fully vested in accordance with the terms thereof, except, in the cases of both clauses (a) and (b), if the Holder holds at least two percent (2%) of the outstanding voting stock of the Company.

2. **Miscellaneous.**

2.1 **Amendments and Waivers.** This Agreement may be amended, modified or terminated only by written instrument or written instruments signed by the Company and the DOE. To the fullest extent permitted by applicable Requirements of Law (as defined in the Arrangement Agreement), no act or course of dealing shall be deemed to constitute an amendment, modification or termination hereof.

2.2 **Delay and Waiver.** No delay or omission in exercising any right, power, privilege or remedy under this Agreement shall impair any such right, power, privilege or remedy of the parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring.

2.3 **Notices.** Except to the extent otherwise expressly provided herein or as required by applicable Requirements of Law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission in Electronic Format (as defined in the Arrangement Agreement)) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) Business Days (as defined in the Arrangement Agreement) after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) Business Day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such party below:

If to DOE:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-8146
Facsimile: (202) 586-7809
Email: teslaatvmtransaction@hq.doe.gov

with a copy to (which copy shall not constitute notice):

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-5281
Facsimile: (202) 586-1499
Email: teslaatvmtransaction@hq.doe.gov

If to the Borrower:

Tesla Motors, Inc.
1050 Bing Street
San Carlos, California 94070
Attention: Chief Financial Officer
Telephone: (650) 701-2690
Facsimile: (650) 701-2612
Email: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

c/o Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel
Telephone No.: (650) 701-2835
Facsimile No.: (650) 701-2620
Email Address: jsobel@teslamotors.com

2.4 **Severability; Consents.** The holding by any court of competent jurisdiction that any remedy pursued by Holder hereunder is unavailable or unenforceable shall not affect in any way the ability of Holder to pursue any other remedy available to it. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement and shall not invalidate or render unenforceable any other provision hereof. In the event that the Holder's consent is required under this Agreement, the determination whether to grant or withhold such consent shall be made by the Holder in its sole discretion without any implied duty towards any other person, except as otherwise expressly provided therein.

2.5 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

2.6 **Governing Law; Waiver of Jury Trial.**

(a) THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, FEDERAL LAW AND NOT THE LAW OF ANY STATE OR LOCALITY. TO THE EXTENT THAT A COURT LOOKS TO THE LAWS OF ANY STATE TO DETERMINE OR DEFINE THE FEDERAL LAW, IT IS THE INTENTION OF THE PARTIES HERETO THAT SUCH COURT SHALL LOOK ONLY TO THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

2.7 **Submission to Jurisdiction, Etc.**

(a) Any legal action or proceeding against the Company with respect to or arising out of this Agreement may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Company or any of its property may be found. By execution and delivery of this Agreement, the Company accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Agreement. The Company hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of forum non-conveniens or improper venue. The Company agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) The Company hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 2.3 and that such mailing is sufficient to confer personal jurisdiction over the Borrower in any proceeding in any court referred to in Section 2.7(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 2.7 shall affect the right of Holder to serve process in any other manner permitted by law.

2.8 **Entire Agreement.** This Agreement, the Arrangement Agreement and the other Loan Documents (as defined in the Arrangement Agreement) constitute the entire agreement and understanding, and supersede all prior agreements and understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

2.9 **Headings.** Paragraph headings have been inserted into this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

2.10 **Counterparts.** This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

[Signature Page Follows]

The parties have executed this Registration Rights Agreement as of the date first above written.

TESLA MOTORS, INC.

By: _____

Name: Elon Musk

Title: Chief Executive Officer

UNITED STATES DEPARTMENT OF ENERGY

By: _____

Name: _____

Title: _____

[Signature Page to Registration Rights Agreement]

The parties have executed this Registration Rights Agreement as of the date first above written.

TESLA MOTORS, INC.

By: _____
Name: Elon Musk
Title: Chief Executive Officer

UNITED STATES DEPARTMENT OF ENERGY

By: Lachlan W Seward
Name: LACHLAN W SEWARD
Title: DIRECTOR, ATVM LOAN PROGRAM

[Signature Page to Registration Rights Agreement]

Annex A

Tesla Motors, Inc.

Lock-Up Agreement

Ladies and Gentlemen:

The undersigned understands that you, as representatives (the "Representatives"), propose to enter into an Underwriting Agreement on behalf of the several Underwriters named in Schedule I to such agreement (collectively, the "Underwriters"), with Tesla Motors, Inc., a Delaware corporation (the "Company") and the stockholders of the Company named in Schedule II thereto, providing for a public offering of the Common Stock of the Company (the "Shares") pursuant to a Registration Statement on Form S-1 to be filed with the Securities and Exchange Commission (the "SEC").

In consideration of the agreement by the Underwriters to offer and sell the Shares, and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees that, during the period specified in the following paragraph (the "Lock-Up Period"), the undersigned will not offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of any shares of Common Stock of the Company, or any options or warrants to purchase any shares of Common Stock of the Company, or any securities convertible into, exchangeable for or that represent the right to receive shares of Common Stock of the Company, whether now owned or hereinafter acquired, owned directly by the undersigned (including holding as a custodian) or with respect to which the undersigned has beneficial ownership within the rules and regulations of the SEC (collectively the "Undersigned's Shares"). The foregoing restriction is expressly agreed to preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Shares even if such Shares would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put or call option) with respect to any of the Undersigned's Shares or with respect to any security that includes, relates to, or derives any significant part of its value from such Shares.

The initial Lock-Up Period will commence on the date of this Lock-Up Agreement and continue for 180 days after the public offering date set forth on the final prospectus used to sell the Shares (the "Public Offering Date") pursuant to the Underwriting Agreement; provided, however, that if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or announces material news or a material event or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 15-day period following the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be automatically extended until the expiration of the 18-day period beginning on the

date of release of the earnings results or the announcement of the material news or material event, as applicable, unless each of the Representatives waive, in writing, such extension.

The undersigned hereby acknowledges that the Company has agreed in the Underwriting Agreement to provide written notice of any event that would result in an extension of the Lock-Up Period pursuant to the previous paragraph to the undersigned (in accordance with Section 13 of the Underwriting Agreement) and agrees that any such notice properly delivered will be deemed to have been given to, and received by, the undersigned. The undersigned hereby further agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Agreement during the period from the date of this Lock-Up Agreement to and including the 34th day following the expiration of the initial Lock-Up Period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company that the Lock-Up Period (as such may have been extended pursuant to the previous paragraph) has expired."

Notwithstanding the foregoing, the undersigned may (a) transfer the Undersigned's Shares (i) acquired in open market transactions after the Public Offering Date, (ii) as a *bona fide* gift or gifts, provided that the donee or donees thereof agree to be bound in writing by the restrictions set forth herein, (iii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, (iv) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity (A) to another corporation, partnership limited liability company, trust or other business entity that is a direct or indirect affiliate of the undersigned or (B) as part of a distribution without consideration by the undersigned to its stockholders, partners, members, or other equity holders, provided that in the case of any transfer contemplated in (A) or (B) above, it shall be a condition to the transfer that each transferee executes an agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of this Agreement and there shall be no further transfer of such capital stock except in accordance with this Agreement, (v) by will or intestate succession upon the death of the undersigned, provided that the transferee agrees to be bound in writing by the restrictions set forth herein, (vi) in connection with the "cashless" exercise of options to purchase shares of Common Stock for purposes of exercising such options pursuant to employee benefit plans disclosed in the final prospectus used to sell the Shares, (vii) to the Company in connection with the payment of taxes due, (viii) to the Company in connection with the repurchase of shares of Common Stock issued pursuant to employee benefit plans disclosed in the final prospectus used to sell the Shares or pursuant to the agreements pursuant to which such shares were issued, or (ix) with the prior written consent of each of the Representatives on behalf of the Underwriters, or (b) enter into a written plan meeting the requirements of Rule 10b5-1 under the Exchange Act relating to the sale of securities of the Company, provided that the securities subject to such plan may not be sold until after the expiration of the Lock-Up Period and provided further that the establishment of such plan will not result in any public filing or other public announcement of such plan by the undersigned or the Company during the Lock-Up Period. In addition, with respect to clauses (a)(i) through (vii) above, it shall be a condition to such transfer that no filing under Section 16(a) of the Exchange Act, reporting a

reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the restricted period referred to above. For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. This Lock-Up Agreement shall not apply to shares of Common Stock sold by the undersigned to the Underwriters in the public offering.

The undersigned understands that the Company and the Underwriters are relying upon this Lock-Up Agreement in proceeding toward consummation of the offering. The undersigned further understands that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors, and assigns.

Very truly yours,

_____

Exact Name of Shareholder

_____

Authorized Signature

_____

Title

EXECUTION COPY

COLLATERAL TRUST AGREEMENT

Dated as of January 20, 2010

among

TESLA MOTORS, INC.,

CERTAIN OF ITS SUBSIDIARIES PARTIES HERETO,

and

MIDLAND LOAN SERVICES, INC.,

as Collateral Trustee

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION 2
1.1 Definitions 2
1.2 Other Rules of Construction 4

ARTICLE II REMEDIES 5
2.1 Notices of Default 5
2.2 General Authority of the Collateral Trustee over the Collateral 6
2.3 Right to Initiate Judicial Proceedings 6
2.4 Right to Appoint a Receiver 6
2.5 Exercise of Powers; Instructions of DOE 7
2.6 Remedies Not Exclusive 7
2.7 Waiver and Estoppel 8
2.8 Limitation on Collateral Trustee's Duty in Respect of Collateral 9
2.9 Limitation by Law 9
2.10 Rights of Secured Parties under Loan Documents 9
2.11 Collateral Use 9

ARTICLE III COLLATERAL ACCOUNT; DISTRIBUTIONS 11
3.1 The Collateral Account 11
3.2 Control of Collateral Account 11
3.3 Investment of Funds Deposited in Collateral Account 11
3.4 Application of Moneys 12
3.5 Amounts Held for Contingent Secured Obligations 13
3.6 Collateral Trustee's Calculations 13
3.7 Pro Rata Sharing 14

ARTICLE IV AGREEMENTS WITH TRUSTEE 14
4.1 Delivery of Loan Documents 14
4.2 Information as to Secured Parties 14
4.3 Stamp and Other Similar Taxes 14
4.4 Indemnification 15
4.5 Trustee Fees 15
4.6 Further Assurances 15
4.7 Inspection of Properties and Books 16

ARTICLE V THE COLLATERAL TRUSTEE 16
5.1 Acceptance of Trust 16
5.2 Exculpatory Provisions 16
5.3 Delegation of Duties 17
5.4 Reliance by Collateral Trustee 17
5.5 Limitations on Duties of Trustee 18

5.6 Moneys to be Held in Trust 19
5.7 Resignation and Removal of the Collateral Trustee 19
5.8 Status of Successor Collateral Trustee 21
5.9 Merger of the Collateral Trustee 21
5.10 Co-Collateral Trustee; Separate Collateral Trustee 21
5.11 Treatment of Payee or Indorsee by Collateral Trustee; Representatives of Secured Parties 23

ARTICLE VI MISCELLANEOUS 23
6.1 Amendments, etc. 23
6.2 Delay and Waiver 23
6.3 Notices 23
6.4 Severability 24
6.5 Limitation on Liability 24
6.6 Successors and Assigns 24
6.7 Further Assurances and Corrective Instruments 24
6.8 Governing Law; Waiver Of Jury Trial 24
6.9 Submission to Jurisdiction, Etc. 25
6.10 Entire Agreement 25
6.11 Benefits of Agreement 25
6.12 Headings 25
6.13 Counterparts 26
6.14 No Partnership; Etc. 26
6.15 Termination and Release 26
6.16 Independence of Covenants 27
6.17 Additional Grantors 27
6.18 Rights and Immunities of DOE 28

ANNEX I Trust Security Documents

EXHIBIT A Form of Notice of Default

SCHEDULE 6.3 Notice Addresses

COLLATERAL TRUST AGREEMENT (this "Agreement"), dated as of January 20, 2010 among TESLA MOTORS, INC., a Delaware corporation (the "Borrower"), the Subsidiaries of the Borrower that may from time to time become parties hereto (together with the Borrower, the "Grantors") and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee").

PRELIMINARY STATEMENTS

A. Pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement"), between the Borrower and the United States Department of Energy ("DOE"), DOE has agreed to arrange for the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("FFB"), to purchase certain future advance promissory notes (as amended, supplemented or otherwise modified from time to time, the "Notes") to be issued by the Borrower pursuant to the Note Purchase Agreement, dated as of January 20, 2010, among the Borrower, DOE and FFB (as amended, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), and to make extensions of credit to the Borrower from time to time upon the terms and subject to the conditions set forth in the Notes and the other Loan Documents.

B. Pursuant to the Program Financing Agreement, dated as of September 16, 2009, between DOE and FFB, DOE is obligated to reimburse FFB for any liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the Notes or the related Note Purchase Agreement.

C. The proceeds of the extensions of credit under the Funding Agreements will be used by the Borrower to fund Eligible Project Costs incurred by the Borrower under the Advanced Technology Vehicles Manufacturing Incentive Program administered by DOE.

D. Pursuant to FABS GSA Schedule GS-23F-0056T, Order No. DE-DT0000982 (as amended from time to time pursuant to change orders and sub-tasks, the "FI Consulting Agreement"), DOE engaged FI Consulting, Inc. ("FI Consulting") to provide certain services in connection with the Advanced Technology Vehicles Manufacturing Incentive Program, including engaging the Collateral Trustee on behalf of DOE.

E. FI Consulting and the Collateral Trustee are parties to the Contractor Team Arrangement dated as of January 11, 2010 (the "Teaming Agreement"), pursuant to which Collateral Trustee agreed to provide certain collateral trustee services, as more specifically set forth therein.

F. It is a condition precedent to the obligation of DOE under the Arrangement Agreement to deliver the Principal Instruments required for FFB to purchase the Notes under the Note Purchase Agreement that (i) the Grantors shall agree to secure the prompt and complete payment and performance when due of the Secured Obligations and (ii) the Grantors and the Collateral Trustee shall execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the premises and to induce DOE to enter into the Arrangement Agreement and to induce FFB to enter into the Note Purchase Agreement, purchase the Notes and make extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Collateral Trustee, for the ratable benefit of the Secured Parties, as follows:

DECLARATION OF TRUST

IN ORDER TO SECURE the prompt and complete payment and performance when due of the Secured Obligations and in consideration of the premises and the mutual agreements set forth herein, the Collateral Trustee does hereby declare that it holds and will hold as trustee in trust under this Agreement all of its right, title and interest in, to and under the Trust Security Documents and the collateral granted to the Collateral Trustee thereunder whether now existing or hereafter arising (and the Grantors do hereby consent thereto).

TO HAVE AND TO HOLD the Trust Security Documents and the entire Collateral (the right, title and interest of the Collateral Trustee in the Trust Security Documents and the Collateral being hereinafter referred to as the "Trust Estate") unto the Collateral Trustee and its successors in trust under this Agreement and its assigns forever.

IN TRUST NEVERTHELESS, under and subject to the conditions herein set forth and for the benefit of the Secured Parties, and for the enforcement of the payment of all Secured Obligations, and as security for the performance of and compliance with the covenants and conditions of this Agreement, each of the Loan Documents and each of the Trust Security Documents.

PROVIDED, HOWEVER, that these presents are upon the condition that if the Grantors, their successors or assigns, shall satisfy the conditions set forth in Section 6.15(a), then this Agreement, and the estates and rights hereby assigned, shall cease, determine and be void; otherwise they shall remain and be in full force and effect.

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Trust Estate is to be held and applied by the Collateral Trustee, subject to the further covenants, conditions and trusts hereinafter set forth.

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in the Arrangement Agreement or, if not defined therein, in the UCC. In addition, the following terms shall have the following meanings:

"Arrangement Agreement" has the meaning given to such term in the preliminary statements.

"Borrower" has the meaning given to such term in the Preamble.

"Collateral" shall mean, collectively, all collateral in which the Collateral Trustee is granted a security interest pursuant to any Security Document.

"Collateral Account" has the meaning given to such term in Section 3.1.

"Collateral Enforcement Action" means, with respect to any Secured Party, for such Secured Party, whether or not in consultation with any other Secured Party, to exercise, seek to exercise, join any Person in exercising or to institute or to maintain or to participate in any action or proceeding with respect to, any rights or remedies with respect to any Collateral, including (i) instituting or maintaining, or joining any Person in instituting or maintaining, any enforcement, contest, protest, attachment, collection, execution, levy or foreclosure action or proceeding with respect to any Collateral, whether under any Loan Document, Trust Security Document or otherwise, (ii) exercising any right of set-off with respect to any Grantor, or (iii) exercising any other right or remedy under the UCC or the Uniform Commercial Code of any other applicable jurisdiction or under any Bankruptcy Law or other applicable Requirements of Law.

"Collateral Trustee" means Midland Loan Services, Inc., a Delaware corporation, in its capacity as trustee under this Agreement, and any successor trustee appointed thereunder.

"Distribution Date" means each date fixed by the Collateral Trustee for a distribution to the Secured Parties of funds held in the Collateral Account, the first of which shall be within seventy-five (75) days after the Collateral Trustee receives a Notice of Default and the remainder of which shall be monthly thereafter (or more frequently if requested by DOE) on the day of the month corresponding to the first Distribution Date (or, if there be no such corresponding day, the last day of such month), *provided* that if any such day is not a Business Day, such Distribution Date shall be the next Business Day.

"Dollars" and "$" means the lawful money of the United States.

"Effective Date" means January 20, 2010.

"Grantors" has the meaning given to such term in the Preamble.

"Notice of Default" means a written notice delivered to the Collateral Trustee by DOE, stating that to DOE's knowledge an Event of Default under the Loan Documents has occurred and is continuing. Each Notice of Default shall be in substantially the form of Exhibit A.

"Opinion of Counsel" means an opinion in writing signed by legal counsel reasonably satisfactory to the Collateral Trustee, who may be counsel regularly retained by the Collateral Trustee or counsel to the Borrower.

"Proceeds" means all "proceeds" as defined in Article 9 of the UCC and includes, in any event, all payments or distributions made with respect to any other item of Collateral and

whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"Secured Parties" shall mean at any time the Collateral Trustee (in its capacity as the holder of the Lien on the Collateral securing the Secured Obligations), DOE, FFB and any other holder of Secured Obligations outstanding at such time.

"Trust Estate" has the meaning given in the Declaration of Trust in this Agreement.

"Trust Security Documents" means each of the instruments described in Annex I to this Agreement and each agreement entered into pursuant to Section 6.1 of this Agreement.

"Trustee Fees" means all fees, costs and expenses of the Collateral Trustee of the types described in Sections 4.3 and 4.4.

1.2 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Agreement denoting one gender only shall be construed to include the other gender;

(b) when used in this Agreement, the words "including", "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Agreement, the words "herein", "hereby", "hereunder", "hereof", "hereto", "hereinbefore", and "hereinafter", and words of similar import, unless otherwise specified, shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(d) each reference in this Agreement to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(e) capitalized terms in this Agreement referring to any Person or party to any Loan Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(f) each reference in this Agreement to any Loan Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Loan Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(g) each reference in this Agreement to any Requirement of Law shall be construed as a reference to such Requirement of Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(h) each reference in this Agreement to any provision of any other Loan Document will include reference to any definition or provision incorporated by reference within that provision;

(i) 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, Capital Stock, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights;

(j) the word "will" shall be construed as having the same meaning and effect as the word "shall"; and

(k) where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

ARTICLE II

REMEDIES

2.1 Notices of Default.

(a) Upon receipt by the Collateral Trustee of a Notice of Default, and so long as such Notice of Default is in effect, the Collateral Trustee shall exercise the rights and remedies provided in this Agreement and in the Trust Security Documents subject to the direction of DOE, as provided herein. Except as otherwise provided in the last sentence of Section 2.2, the Collateral Trustee is not empowered to exercise any remedy hereunder or under any Trust Security Documents unless a Notice of Default is in effect.

(b) A Notice of Default delivered by DOE shall become effective upon receipt thereof by the Collateral Trustee. Notwithstanding anything in this Agreement to the contrary, a Notice of Default shall be deemed to be in effect whenever an Event of Default under Section 10.1(k) of the Arrangement Agreement with respect to the Borrower has occurred and is continuing. A Notice of Default, once effective, shall remain in effect unless and until it is cancelled as provided in Section 2.1(c).

(c) DOE shall be entitled to cancel a Notice of Default by delivering a written notice of cancellation to the Collateral Trustee at any time, provided that no such cancellation shall invalidate any actions taken by the Collateral Trustee to exercise any remedy with respect to the Collateral prior to the time the Collateral Trustee receives such written notice of cancellation in accordance with Section 6.3.

2.2 General Authority of the Collateral Trustee over the Collateral. Each Grantor hereby irrevocably constitutes and appoints the Collateral Trustee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney in fact with full power and authority in its or his own name, from time to time in the Collateral Trustee's discretion, subject to Section 2.1, so long as any Notice of Default is in effect, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Agreement and the Trust Security Documents and accomplish the purposes hereof and thereof and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Trustee, subject to Section 2.1, the power and right on behalf of such Grantor, without notice to or further assent by such Grantor, so long as any Notice of Default is in effect, to take any Collateral Enforcement Actions permitted under the Trust Security Documents and to do, at its option and at the expense and for the account of Grantors, all acts and things which the Collateral Trustee deems necessary to protect or preserve the Collateral and to realize upon the Collateral in accordance with the provisions of the Trust Security Documents. Notwithstanding the foregoing, so long as no Notice of Default is in effect, the Collateral Trustee shall take such actions as are contemplated by this Agreement or the Trust Security Documents, subject to the direction of DOE, it being understood that such actions shall not include any action which pursuant to the express terms hereof can only be taken when a Notice of Default is in effect.

2.3 Right to Initiate Judicial Proceedings. If a Notice of Default is in effect, the Collateral Trustee, subject to the provisions of Sections 2.5(b) and 4.6, (a) shall have the right and power to institute and maintain such suits and proceedings as it may deem appropriate to protect and enforce the rights vested in it by this Agreement and each Trust Security Document and (b) may, either after entry, or without entry, proceed by suit or suits at law or in equity to enforce such rights and to foreclose upon the Collateral and to sell all or, from time to time, any of the Collateral under the judgment or decree of a court of competent jurisdiction.

2.4 Right to Appoint a Receiver. If a Notice of Default is in effect, upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Collateral Trustee under this Agreement or any Trust Security Document, the Collateral Trustee shall, to the extent permitted by Law, with notice to the Borrower but without notice to any party claiming through the Grantors, without regard to the solvency or insolvency at the time of any Person then liable for the payment of any of the Secured Obligations, without regard to the then value of the Trust Estate, and without requiring any bond from any complainant in such proceedings, be entitled as a matter of right to the appointment of a receiver or receivers (who may be the Collateral Trustee) of the Trust Estate, or any part thereof, and of the rents, issues, tolls, profits, royalties, revenues and other income thereof, pending such proceedings, with such powers as the court making such appointment shall confer, and to the entry of an order directing that the rents, issues, tolls, profits, royalties, revenues and other income of the property constituting the whole or any part of the Trust Estate be segregated, sequestered and impounded for the benefit of the Collateral Trustee and the Secured Parties, and each Grantor irrevocably consents to the appointments of such receiver or receivers and to the entry of such order; *provided* that, notwithstanding the appointment of any receiver, the Collateral Trustee shall be entitled to retain possession and control of all cash and Cash Equivalents held by or deposited with it pursuant to this Agreement or any Trust Security Document.

2.5 Exercise of Powers; Instructions of DOE.

(a) All of the powers, remedies and rights of the Collateral Trustee as set forth in this Agreement may be exercised by the Collateral Trustee in respect of any Trust Security Document as though set forth in full therein and all of the powers, remedies and rights of the Collateral Trustee, DOE and the other Secured Parties as set forth in any Trust Security Document may be exercised from time to time as herein and therein provided.

(b) DOE shall at all times have the right, by one or more notices in writing executed and delivered to the Collateral Trustee (or by telephonic notice promptly confirmed in writing), to direct the time, method and place of conducting any proceeding for any right or remedy available to the Collateral Trustee, or of exercising any trust or power conferred on the Collateral Trustee, or for the appointment of a receiver, or to direct the taking or the refraining from taking of any action authorized by this Agreement or any Trust Security Document; *provided* that (i) such direction shall not conflict with any Requirement of Law, this Agreement or any Trust Security Document and, (ii) the Collateral Trustee shall be adequately secured and indemnified as provided in Section 5.4(d). In the absence of such direction, the Collateral Trustee shall have no duty to take or refrain from taking any action unless explicitly required herein.

(c) Whether or not any Insolvency Proceeding has been commenced by or against any Grantor, no Secured Party (other than DOE) shall do (or direct the Collateral Trustee to do) any of the following without the consent of DOE: (i) take any Collateral Enforcement Action or commence, seek to commence or join any other Person in commencing any Insolvency Proceeding; or (ii) object to, contest or take any other action that is reasonably likely to hinder (A) any Collateral Enforcement Action initiated by the Collateral Trustee, (B) any release of Collateral permitted under Section 6.15, whether or not done in consultation with or with notice to such Secured Party or (C) any decision by DOE to forbear or refrain from bringing or pursuing any such Collateral Enforcement Action or to effect any such release.

2.6 Remedies Not Exclusive.

(a) No remedy conferred upon or reserved to the Collateral Trustee herein or in the Trust Security Documents is intended to be exclusive of any other remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or in any Trust Security Document or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission by the Collateral Trustee to exercise any right, remedy or power hereunder or under any Trust Security Document shall impair any such right, remedy or power or shall be construed to be a waiver thereof, and every right, power and remedy given by this Agreement or any Trust Security Document to the Collateral Trustee may be exercised from time to time and as often as may be deemed expedient by the Collateral Trustee.

(c) If the Collateral Trustee shall have proceeded to enforce any right, remedy or power under this Agreement or any Trust Security Document and the proceeding for the enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Trustee, then the Grantors, the Collateral Trustee and the Secured Parties shall, subject to any determination in such proceeding, severally and respectively be restored to their former positions and rights hereunder or thereunder with respect to the Trust Estate and in all other respects, and thereafter all rights, remedies and powers of the Collateral Trustee shall continue as though no such proceeding had been taken.

(d) All rights of action and of asserting claims upon or under this Agreement and the Trust Security Documents may be enforced by the Collateral Trustee without the possession of any Loan Document or instrument evidencing any Secured Obligation or the production thereof at any trial or other proceeding relative thereto, and any suit or proceeding instituted by the Collateral Trustee shall be, subject to Sections 5.5(c) and 5.10(b)(ii), brought in its name as Collateral Trustee and any recovery of judgment shall be held as part of the Trust Estate.

2.7 Waiver and Estoppel.

(a) Each Grantor agrees, to the extent it may lawfully do so, that it will not at any time in any manner whatsoever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension, moratorium, turnover or redemption Law, or any Requirement of Law permitting it to direct the order in which the Collateral shall be sold, now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance or enforcement of this Agreement or any Trust Security Document and hereby waives all benefit or advantage of all such Requirements of Law and covenants that it will not hinder, delay or impede the execution of any power granted to the Collateral Trustee in this Agreement or any Trust Security Document but will suffer and permit the execution of every such power as though no such Requirement of Law were in force.

(b) Each Grantor, to the extent it may lawfully do so, on behalf of itself and all who may claim through or under it, including without limitation any and all subsequent creditors, vendees, assignees and lienors, waives and releases all rights to demand or to have any marshalling of the Collateral upon any sale, whether made under any power of sale granted herein or in any Trust Security Document or pursuant to judicial proceedings or upon any foreclosure or any enforcement of this Agreement or any Trust Security Document and consents and agrees that all the Collateral may at any such sale be offered and sold as an entirety.

(c) Each Grantor waives, to the extent permitted by applicable Requirements of Law, presentment, demand, protest and any notice of any kind (except notices explicitly required hereunder, under any Loan Document or under any other Trust Security Document) in connection with this Agreement and the Trust Security Documents and any action taken by the Collateral Trustee with respect to the Collateral.

2.8 Limitation on Collateral Trustee's Duty in Respect of Collateral. Beyond its duties as to the custody thereof expressly provided herein or in any Trust Security Document and to account to the Secured Parties and the Grantors for moneys and other property received by it hereunder or under any Trust Security Document, the Collateral Trustee shall not have any duty to the Grantors or to the Secured Parties as to any Collateral in its possession or control or in the possession or control of any of its agents or nominees, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

2.9 Limitation by Law. All rights, remedies and powers provided in this Agreement or any Trust Security Document may be exercised only to the extent that the exercise thereof does not violate any applicable Requirement of Law, and all the provisions hereof are intended to be subject to each applicable mandatory Requirement of Law which may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable in whole or in part or not entitled to be recorded, registered or filed under the provisions of any applicable Requirement of Law.

2.10 Rights of Secured Parties under Loan Documents. Notwithstanding any other provision of this Agreement or any Trust Security Document, the right of each Secured Party to receive payment of the Secured Obligations held by such Secured Party when due (whether at the stated maturity thereof, by Default or otherwise) as expressed in the related Loan Document or other instrument evidencing or agreement governing a Secured Obligation or to institute suit for the enforcement of such payment on or after such due date or to exercise any other remedy it may have as an unsecured creditor against the Grantors, and the obligation of the Grantors to pay such Secured Obligations when due, shall not be impaired or affected without the consent of such Secured Party given in the manner prescribed by the Loan Document under which such Secured Obligation is outstanding; *provided, however*, that in the event any Secured Party becomes a judgment lien creditor or otherwise obtains any Lien as a result of its enforcement of its rights as an unsecured creditor, such Lien and the Collateral subject thereto shall be subject to all of the terms and conditions of this Agreement.

2.11 Collateral Use.

(a) Collateral Use Prior to Default. So long as no Notice of Default is in effect, the Grantors shall have the right, subject to Sections 2.11(d) and (e) below: (i) to remain in possession and retain exclusive control of the Collateral (except for such property which the Grantors are required to give possession of or control over to the Collateral Trustee pursuant to the terms of any Trust Security Document or other Loan Document) with power freely and without let or hindrance on the part of the Secured Parties to operate, manage, develop, use and enjoy the Collateral, to receive the rents, issues, tolls, profits, royalties, revenues and other income thereof, and (ii) to sell or otherwise dispose of, free and clear of the Lien created by the Trust Security Documents and this Agreement, any Collateral if such sale or other disposition is not prohibited by the Loan Documents or has been expressly approved in accordance with the terms of the Loan Documents or if any Person is legally empowered to take any Collateral under the power of condemnation or eminent domain. The Collateral Trustee shall have no duty to monitor the exercise by the Grantors of their rights under this Section 2.11(a).

(b) Use of Disposition Proceeds Following a Notice of Default. When a Notice of Default is in effect, cash Proceeds received by the Collateral Trustee in connection with the sale or other disposition of Collateral shall be deposited in the Collateral Account and shall be held therein and applied in accordance with Article III hereof. Any such Proceeds received by any Grantor shall be held by such Grantor in trust for the Collateral Trustee, shall be segregated from other funds of such Grantor and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Trustee, in same form as received by such Grantor (duly indorsed to the Collateral Trustee, if required) for deposit in the Collateral Account. Notwithstanding anything to the contrary in this Agreement, unless a Notice of Default is in effect, each Grantor may upon written or oral request (confirmed in writing to the Collateral Trustee) obtain the prompt release to it or its order of such funds in the Collateral Account, *provided* that the failure to confirm an oral request in writing shall not affect the validity of such request and the Collateral Trustee's obligations to promptly release such funds. Any written or oral request or instruction by any Grantor pursuant to the preceding sentence shall be full authority for and direction to the Collateral Trustee to make the requested release, and the Collateral Trustee shall promptly do so. The Collateral Trustee in so doing shall have no liability to any Person.

(c) Liquidating Dividends. When a Notice of Default is in effect, any liquidating dividends paid in respect of any Collateral received by any of the Grantors shall be held by such Grantor in trust for the Collateral Trustee, shall be segregated from other funds of such Grantor and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Trustee, in same form as received by such Grantor (duly indorsed to the Collateral Trustee, if required) for deposit in the Collateral Account and applied in accordance with Article III hereof.

(d) Event of Loss Proceeds. All cash Proceeds received directly by the Collateral Trustee in connection with an Event of Loss shall be deposited in the Collateral Account, subject to disbursement as provided below in this Section 2.11(d). Any cash Proceeds received by any Grantor shall, to the extent required under Section 7.5(b) of the Arrangement Agreement, be held by such Grantor in trust for the Collateral Trustee, shall be segregated from other funds of such Grantor and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Trustee, in same form as received by such Grantor (duly indorsed to the Collateral Trustee, if required) for deposit in the Collateral Account. The Collateral Trustee shall disburse and apply such funds from the Collateral Account (i) so long as no Notice of Default is in effect, as directed by DOE and (ii) when a Notice of Default is in effect, in accordance with Article III hereof. Notwithstanding clause (i) above, to the extent that any cash Proceeds of an Event of Loss paid directly to the Collateral Trustee and deposited in the Collateral Account (x) would not have been required to be turned over to the Collateral Trustee if such Proceeds instead had been paid to the applicable Grantor, or (y) are permitted to be reinvested by the Borrower, in either case pursuant to Section 7.5(c) of the Arrangement Agreement, unless a Notice of Default is in effect, such Grantor may, upon written request accompanied by a fully executed certificate of a Responsible Officer of such Grantor delivered to the Collateral Trustee (with a copy to DOE (or its designee) in Electronic Format) certifying that the conditions set forth in such Section 7.5(c) have been satisfied, obtain the prompt release

to such Grantor or to its order of such funds from the Collateral Account to be applied to the repair or restoration of the applicable Project or property as directed by such Section 7.5(c). Any written request or instruction by any Grantor pursuant to the preceding sentence shall be full authority for and direction to the Collateral Trustee to make the requested release, and the Collateral Trustee shall promptly do so. The Collateral Trustee in so doing shall have no liability to any Person.

ARTICLE III

COLLATERAL ACCOUNT; DISTRIBUTIONS

3.1 The Collateral Account. On the Effective Date there shall be established and, at all times thereafter until the trusts created by this Agreement shall have terminated, there shall be maintained in the name of the Collateral Trustee at the office of the Collateral Trustee's corporate trust division (or at such other office selected by the Collateral Trustee) an account which is entitled the "ATVM Tesla Collateral Account" (the "Collateral Account"). All moneys which are required by this Agreement or any Trust Security Document to be delivered to the Collateral Trustee while a Notice of Default is in effect or which are received by the Collateral Trustee or any agent or nominee of the Collateral Trustee in respect of the Collateral, whether in connection with the exercise of the remedies provided in this Agreement or any Trust Security Document or otherwise, while a Notice of Default is in effect (or as provided under Section 2.11(d) above) shall be deposited in the Collateral Account and Proceeds thereof to be held by the Collateral Trustee as part of the Trust Estate and applied in accordance with the terms of this Agreement. Upon the cancellation of all Notices of Default pursuant to Section 2.1(c) or the receipt by the Collateral Trustee of any moneys at any time when no Notice of Default is in effect, the Collateral Trustee shall (subject to Sections 2.11(d) and 3.4(a)) cause all funds on deposit in the Collateral Account or otherwise received by the Collateral Trustee to be paid over to the Grantors in accordance with their respective interests.

3.2 Control of Collateral Account. All right, title and interest in and to the Collateral Account shall vest in the Collateral Trustee, and funds on deposit in the Collateral Account shall constitute part of the Trust Estate. The Collateral Account shall be subject to the exclusive dominion and control of the Collateral Trustee. Each Grantor hereby grants a security interest in the Collateral Account to the Collateral Trustee for the benefit of the Secured Parties, as collateral security for the Secured Obligations.

3.3 Investment of Funds Deposited in Collateral Account. The Collateral Trustee shall, at the direction of DOE, invest and reinvest moneys on deposit in the Collateral Account at any time in Limited Cash Equivalents. All such investments and the interest and income received thereon and the net proceeds realized on the sale or redemption thereof shall be held in the Collateral Account as part of the Trust Estate and applied in accordance with the terms of this Agreement and the Trust Security Documents. Neither the Collateral Trustee nor any other Secured Party shall be responsible for any diminution in funds resulting from such investments or any liquidation prior to maturity. In the absence of such directions, the Collateral Trustee shall have no obligation to invest or reinvest moneys.

3.4 Application of Moneys.

(a) The Collateral Trustee shall have the right (pursuant to Section 4.5) at any time to apply moneys held by it in the Collateral Account to the payment of due and unpaid Trustee Fees without any requirement that such applications be made ratably from such accounts.

(b) Subject to clause (a) above and Section 2.11(d), all moneys held by the Collateral Trustee in the Collateral Account while a Notice of Default is in effect shall, to the extent available for distribution (it being understood that the Collateral Trustee may liquidate investments prior to maturity in order to make a distribution pursuant to this Section 3.4(b) and that DOE may instruct the Collateral Trustee in accordance with Section 2.5(b) to retain any or all moneys in the Collateral Account rather than distribute them pursuant to this Section 3.4(b) until otherwise instructed by DOE), be distributed (subject to the provisions of Sections 3.5 and 3.7) by the Collateral Trustee on each Distribution Date in the following order of priority (with such distributions being made by the Collateral Trustee to DOE for the Secured Parties entitled thereto, pursuant to directions of DOE, as provided in Section 3.4(d):

(i) First: to the Collateral Trustee for any unpaid Trustee Fees and then to any Secured Party (other than the Collateral Trustee) which has theretofore advanced or paid to the Collateral Trustee any fees or expenses constituting administrative expenses allowable under Section 503(b) of the Bankruptcy Code, an amount equal to the amount thereof so advanced or paid by such Secured Party and for which such Secured Party has not been reimbursed prior to such Distribution Date, and, if such moneys shall be insufficient to pay such amounts in full, then ratably (without priority of any one over any other) to such Secured Parties (other than the Collateral Trustee) in proportion to the amounts of such administrative expenses advanced by such respective Secured Parties and remaining unpaid on such Distribution Date;

(ii) Second: to any Secured Party (other than the Collateral Trustee) which has theretofore advanced or paid to the Collateral Trustee any fees or expenses other than the administrative expenses specified in clause(b)(i), an amount equal to the amount thereof so advanced or paid by such Secured Party and for which such Secured Party has not been reimbursed prior to such Distribution Date, and, if such moneys shall be insufficient to pay such amounts in full, then ratably (without priority of any one over any other) to such Secured Parties (other than the Collateral Trustee) in proportion to the amounts of such fees or expenses advanced by such respective Secured Parties and remaining unpaid on such Distribution Date;

(iii) Third: to DOE for any unpaid expenses payable to it pursuant to the Loan Documents to the extent the same constitute Secured Obligations;

(iv) Fourth: to the holders of Secured Obligations, in an amount equal to all other Secured Obligations then outstanding, as of such Distribution Date, and, if such moneys shall be insufficient to pay such amounts in full, then ratably to such holders in proportion to the unpaid amounts thereof on such Distribution Date; and

(v) Fifth: any surplus then remaining shall be paid to the Grantors or their successors or assigns or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(c) The term "unpaid" as used in Section 3.4(b)(iii) with respect to the relevant Grantor(s), refers to all amounts of Secured Obligations outstanding as of a Distribution Date, whether or not such amounts are fixed or contingent, and, in the case of an Insolvency Proceeding, with respect to any Grantor, whether or not such amounts are allowed in such Insolvency Proceeding, to the extent that prior distributions (whether actually distributed or set aside pursuant to Section 3.5) have not been made in respect thereof.

(d) The Collateral Trustee shall make all payments and distributions under this Section 3.4 on account of Secured Obligations to the relevant holder of such Secured Obligations, pursuant to directions of DOE, in accordance with the provisions of the Arrangement Agreement and the other Loan Documents.

3.5 Amounts Held for Contingent Secured Obligations. In the event any Secured Party shall be entitled to receive any moneys in respect of the unliquidated, unmatured or contingent portion of the outstanding Secured Obligations, then the Collateral Trustee shall invest such moneys in obligations of the kinds referred to in Section 3.3 maturing within three (3) months after they are acquired by the Collateral Trustee and shall hold all such amounts so distributable, and all such investments and the net proceeds thereof, in trust solely for such Secured Party and for no other purpose until (a) such Secured Party shall have notified the Collateral Trustee that all or part of such unliquidated, unmatured or contingent claim shall have become matured or fixed, in which case the Collateral Trustee shall distribute from such investments and the proceeds thereof an amount equal to such matured or fixed claim to such Secured Party for application to the payment of such matured or fixed claim, and shall promptly give notice thereof to the Borrower or (b) all or part of such unliquidated, unmatured or contingent claim shall have been extinguished, whether as the result of an expiration without drawing of any letter of credit, payment of amounts secured or covered by any letter of credit other than by drawing thereunder, payment of amounts covered by any guarantee or otherwise, in which case (x) such Secured Party shall, as soon as practicable thereafter, notify the Borrower and the Collateral Trustee and (y) such investments, and the proceeds thereof, shall be held in the Collateral Account in trust for all Secured Parties pending application in accordance with the provisions of Section 3.4.

3.6 Collateral Trustee's Calculations. In making the determinations and allocations required by Section 3.4 and as contemplated by Section 5.2(b), the Collateral Trustee may conclusively rely upon information supplied by DOE as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, and the

Collateral Trustee shall have no liability to any of the Secured Parties for actions taken in reliance on such information. All distributions made by the Collateral Trustee pursuant to Section 3.4 shall be (subject to Section 3.7 and to any decree of any court of competent jurisdiction) final (absent manifest error), and the Collateral Trustee shall have no duty to inquire as to the application by DOE in respect of any amounts distributed to them.

3.7 Pro Rata Sharing. If, through the operation of any Bankruptcy Law or otherwise, the Collateral Trustee's security interest hereunder and under the Trust Security Documents is enforced with respect to some, but not all, of the Secured Obligations then outstanding, the Collateral Trustee shall nonetheless apply the proceeds of the Collateral for the benefit of the holders of all Secured Obligations in the proportions and subject to the priorities specified herein; *provided* that, nothing in this Section 3.7 shall be deemed to require the Collateral Trustee to disregard or violate any court order binding upon it.

ARTICLE IV

AGREEMENTS WITH TRUSTEE

4.1 Delivery of Loan Documents. On the Effective Date, the Borrower shall deliver to the Collateral Trustee copies of the Arrangement Agreement, the Collateral Schedules and each Trust Security Document then in effect. Within ten (10) days of the Effective Date, the Borrower shall deliver to the Collateral Trustee copies of each other Loan Document. The Borrower shall deliver to the Collateral Trustee, promptly upon the execution thereof, a copy of all amendments, modifications or supplements to any Loan Document entered into after the Effective Date.

4.2 Information as to Secured Parties. Subject to Section 5.2(b), the Borrower shall request that DOE deliver to the Collateral Trustee, not later than thirty (30) days after the Effective Date, and from time to time upon request of the Collateral Trustee, when a Notice of Default shall be in effect, a list setting forth, as of the Effective Date in the case of the initial list or as of a date not more than thirty (30) days prior to the date of such delivery in the case of any subsequent list, the aggregate principal amount of Secured Obligations outstanding and the name and address of each Secured Party. The Borrower shall request that DOE notify the Collateral Trustee of any changes of the representatives thereof authorized to give directions hereunder on behalf of DOE prior to the date of any such changes. If the Collateral Trustee does not receive the names of the representatives of DOE authorized to give directions hereunder on behalf of DOE, the Collateral Trustee may rely on any person purporting to be authorized to give directions hereunder on behalf of such parties. If the Collateral Trustee is not informed of changes of the representatives of DOE authorized to give directions hereunder on behalf of DOE, the Collateral Trustee may rely on the information previously provided to the Collateral Trustee.

4.3 Stamp and Other Similar Taxes. The Borrower agrees to indemnify and hold harmless the Collateral Trustee and each other Secured Party from any present or future claim for liability for any stamp or any other similar tax, and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with this Agreement, any Trust Security Document, the Trust Estate or any Collateral. The

obligations of the Borrower under this Section 4.3 shall survive the termination of the other provisions of this Agreement and the resignation or removal of the Collateral Trustee hereunder.

4.4 Indemnification. The Borrower agrees to pay, indemnify, and hold the Collateral Trustee (and its affiliates and respective directors, officers, agents and employees) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including the reasonable fees and expenses of counsel, advisors and agents) or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and the Trust Security Documents, unless arising from the gross negligence or willful misconduct of the indemnified party or any of its affiliates or any of their respective directors, officers, agents or employees, including for taxes in any jurisdiction in which the Collateral Trustee is subject to tax by reason of actions hereunder or under the Trust Security Documents, unless such taxes are imposed on or measured by compensation paid to the Collateral Trustee by DOE. In any suit, proceeding or action brought by the Collateral Trustee under or with respect to any contract, agreement, interest or obligation constituting part of the Collateral for any sum owing thereunder, or to enforce any provisions thereof, the Borrower will save, indemnify and keep the Collateral Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of any Grantor thereunder, arising out of a breach by such Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such Grantor or its successors from any Grantor, and all such obligations of the Borrower shall be and remain enforceable against and only against the Borrower and shall not be enforceable against the Collateral Trustee. The agreements in this Section 4.4 shall survive the termination of the other provisions of this Agreement and the resignation or removal of the Collateral Trustee hereunder.

4.5 Trustee Fees. Notwithstanding anything to the contrary in this Agreement, the Collateral Trustee shall have the right to use and apply any of the funds held by the Collateral Trustee in the Collateral Account to cover the payment of Trustee Fees.

4.6 Further Assurances. At any time and from time to time, upon the written request of the Collateral Trustee, and at the expense of the Borrower, each Grantor will promptly execute and deliver any and all such further instruments and documents and take such further action as is necessary or reasonably requested further to perfect, or to protect the perfection of, the liens and security interests granted under the Trust Security Documents (including the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction); *provided, however*, that notwithstanding anything to the contrary contained herein or in any Trust Security Document, no Grantor shall be required to perfect the security interests granted by it in any Collateral by any means other than by (a) filings pursuant to the Uniform Commercial Code of the relevant State(s) and (b) such additional actions as may be required pursuant to any Loan Document or Trust Security Document. Notwithstanding the foregoing, in no event shall the Collateral Trustee have any obligation to monitor the perfection or continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral.

4.7 Inspection of Properties and Books. So long as a Notice of Default shall be in effect, the Borrower and the Grantors shall give the Collateral Trustee access, at its request, to all Collateral and to all books, records, documents and information in the possession of the Borrower or any other Grantor or any of their respective Subsidiaries relating thereto. At all other times, the Borrower and the Grantors shall give the Collateral Trustee access and information in accordance with Section 7.12 of the Arrangement Agreement.

ARTICLE V

THE COLLATERAL TRUSTEE

5.1 Acceptance of Trust. The Collateral Trustee, for itself and its successors, hereby accepts (a) the trusts created by this Agreement upon the terms and conditions hereof, and (b) the appointment by DOE, FFB and each holder of the Notes pursuant to Section 11.1 of the Arrangement Agreement, as agent under this Agreement and the other Loan Documents.

5.2 Exculpatory Provisions.

(a) The Collateral Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations or warranties herein, all of which are made solely by the Grantors. The Collateral Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Grantors thereto or as to the security afforded by this Agreement or any Trust Security Document, or as to the validity, execution (except its execution), enforceability, legality or sufficiency of this Agreement, the Trust Security Documents or the Secured Obligations, and the Collateral Trustee shall incur no liability or responsibility in respect of any such matters.

(b) The Collateral Trustee shall not be required to ascertain or inquire as to the performance by the Grantors of any of the covenants or agreements contained herein or in any Trust Security Document or Loan Document. Whenever it is necessary, or in the opinion of the Collateral Trustee advisable, for the Collateral Trustee to ascertain the amount of Secured Obligations then held by Secured Parties, the Collateral Trustee may rely on a certificate of DOE, and, if DOE shall not give such information to the Collateral Trustee, the Secured Parties shall not be entitled to receive distributions hereunder and the amount that would otherwise be distributed to the Secured Parties shall instead be held in trust for the Secured Parties until DOE does supply such information to the Collateral Trustee, whereupon on the next Distribution Date the amount distributable to the Secured Parties shall be recalculated using such information and distributed to them.

(c) The Collateral Trustee shall be under no obligation or duty to take any action under this Agreement or any Trust Security Document if taking such action (i) would subject the Collateral Trustee to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require the Collateral Trustee to qualify to do business in any jurisdiction where it is not then so qualified, unless the Collateral Trustee receives security or indemnity satisfactory to it against such tax (or equivalent liability), or any

liability resulting from such qualification, in each case as results from the taking of such action under this Agreement or any Trust Security Document.

(d) The Collateral Trustee shall not be obligated to take, or to refrain from taking, any action which any Secured Party or Grantor requests that the Collateral Trustee take or refrain from taking to the extent that the Collateral Trustee determines in its reasonable judgment that such action or inaction (i) may cause a violation of applicable Requirements of Law or restrictive covenants with respect to the Loans evidenced by the Arrangement Agreement, the Grantors or the Collateral or (ii) may cause a violation of any provision of this Agreement or any Trust Security Document.

(e) The Collateral Trustee shall have the same rights with respect to any Secured Obligation held by it as any other Secured Party and may exercise such rights as though it were not the Collateral Trustee hereunder, and may accept deposits from, lend money to, and generally engage in any kind of banking or trust business with, any of the Grantors as if it were not the Collateral Trustee.

(f) Notwithstanding any other provision of this Agreement, the Collateral Trustee shall not be liable for any action taken or omitted to be taken in accordance with this Agreement or the Trust Security Documents except for its own gross negligence or willful misconduct.

5.3 Delegation of Duties. The Collateral Trustee may execute any of the trusts or powers hereof and perform its duties under this Agreement and the other Loan Documents directly or by or through agents or attorneys-in-fact. The Collateral Trustee shall be entitled to advice of counsel concerning all matters pertaining to such trusts, powers and duties. The Collateral Trustee shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it without gross negligence or willful misconduct.

5.4 Reliance by Collateral Trustee.

(a) Whenever in the administration of this Agreement or the Trust Security Documents the Collateral Trustee shall deem it necessary or desirable that a factual matter be proved or established in connection with the Collateral Trustee taking, suffering or omitting any action hereunder or thereunder, such matter (unless other evidence in respect thereof is herein specifically prescribed) may be deemed to be conclusively proved or established by a fully executed original certificate of a Responsible Officer of the Borrower delivered to the Collateral Trustee, with a copy to DOE (or its designee) in Electronic Format, and such certificate shall be full warrant to the Collateral Trustee for any action taken, suffered or omitted in reliance thereon, subject, however, to the provisions of Section 5.5.

(b) The Collateral Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder or under any Trust Security Document in accordance therewith. While a Notice of Default is in effect, the Collateral Trustee shall

have the right at any time to seek instructions concerning the administration of this Agreement and the Trust Security Documents from any court of competent jurisdiction.

(c) The Collateral Trustee may rely, and shall be fully protected in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document which it has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties. In the absence of its own gross negligence or willful misconduct, the Collateral Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Collateral Trustee and conforming to the requirements of this Agreement.

(d) The Collateral Trustee shall not be under any obligation to exercise any of the rights or powers vested in the Collateral Trustee by this Agreement and the Trust Security Documents, at the request or direction of DOE pursuant to this Agreement or otherwise, unless the Collateral Trustee shall have been provided adequate security and indemnity against the costs, expenses and liabilities which may be incurred by the Collateral Trustee in compliance with such request or direction, including such reasonable advances as may be requested by the Collateral Trustee.

(e) Upon any application or demand by any of the Grantors (except any such application or demand which is expressly permitted to be made orally) to the Collateral Trustee to take or permit any action under any of the provisions of this Agreement or any Trust Security Document, the Borrower shall furnish to the Collateral Trustee a fully executed original certificate of a Responsible Officer of the Borrower, with a copy to DOE (or its designee) in Electronic Format, stating that all conditions precedent, if any, provided for in this Agreement, in any relevant Trust Security Document or in the Arrangement Agreement relating to the proposed action have been complied with, and in the case of any such application or demand as to which the furnishing of any document is specifically required by any provision of this Agreement or a Trust Security Document relating to such particular application or demand, such additional document shall also be furnished; *provided*, that to the extent that the consent or approval of DOE shall be a condition precedent to any such proposed action, the Collateral Trustee shall not take or permit such action unless and until it shall have received confirmation from DOE of such consent or approval.

(f) Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a fully executed original certificate of a Responsible Officer of the Borrower provided to such counsel in connection with such opinion or representations made by a Responsible Officer of the Borrower in a writing filed with the Collateral Trustee.

5.5 Limitations on Duties of Trustee.

(a) Unless a Notice of Default is in effect, the Collateral Trustee shall be obligated to perform such duties and only such duties as are specifically set forth in

this Agreement and the Trust Security Documents, and no implied covenants or obligations shall be read into this Agreement or any Trust Security Document against the Collateral Trustee. If and so long as a Notice of Default is in effect, the Collateral Trustee shall, subject to the provisions of Section 2.5(b), exercise the rights and powers vested in the Collateral Trustee by this Agreement and the Trust Security Documents, and shall not be liable (other than as a result of its own gross negligence or willful misconduct) with respect to any action taken, or omitted to be taken, in accordance with the direction of DOE.

(b) Except as herein otherwise expressly provided, the Collateral Trustee shall not be under any obligation to take any action which is discretionary with the Collateral Trustee under the provisions hereof or of any Trust Security Document, except upon the written request of DOE at such time. The Collateral Trustee shall make available for inspection and copying by DOE and each other Secured Party, each certificate or other paper furnished to the Collateral Trustee by any of the Grantors under or in respect of this Agreement or any of the Collateral.

(c) No provision of this Agreement or of any Trust Security Document shall be deemed to impose any duty or obligation on the Collateral Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Collateral Trustee shall be unqualified or incompetent, to perform any such act or acts or to exercise any such right, power, duty or obligation if such performance or exercise would constitute doing business by the Collateral Trustee in such jurisdiction or impose a tax on the Collateral Trustee by reason thereof or to risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder.

5.6 Moneys to be Held in Trust. All moneys received by the Collateral Trustee under or pursuant to any provision of this Agreement or any Trust Security Document (except Trustee Fees that are required to be paid by the Borrower hereunder) shall be held in trust for the purposes for which they were paid or are held.

5.7 Resignation and Removal of the Collateral Trustee.

(a) The Collateral Trustee may at any time, by giving written notice to the Borrower and DOE, resign and be discharged of the responsibilities hereby created, such resignation to become effective upon (i) the appointment of a successor Collateral Trustee, (ii) the acceptance of such appointment by such successor Collateral Trustee and (iii) the approval of such successor Collateral Trustee evidenced by one or more instruments signed by DOE. If no successor Collateral Trustee shall be appointed as provided in Section 5.7(b) and shall have accepted such appointment within ninety (90) days after the Collateral Trustee gives the aforesaid notice of resignation, the Collateral Trustee, the Borrower (so long as no Notice of Default is then in effect) or, if a Notice of Default is in effect, DOE may apply to any court of competent jurisdiction to appoint a successor Collateral Trustee to act until such time, if any, as a successor Collateral Trustee shall have been appointed as provided in Section 5.7(b). Any successor so appointed by such court shall immediately and without further act be superseded by any

successor Collateral Trustee appointed by DOE, as the case may be, as provided in Section 5.7(b). DOE may, at any time upon giving thirty (30) days' prior written notice thereof to the Collateral Trustee and the Borrower, remove the Collateral Trustee and appoint a successor Collateral Trustee as provided in Section 5.7(b), such removal to be effective upon the acceptance of such appointment by the successor. The Collateral Trustee shall be entitled to Trustee Fees to the extent incurred or arising, or relating to events occurring, before such resignation or removal.

(b) If at any time the Collateral Trustee shall resign or be removed or otherwise become incapable of acting, or if at any time a vacancy shall occur in the office of the Collateral Trustee for any other cause, a successor Collateral Trustee may be appointed by DOE. DOE may appoint itself as successor Collateral Trustee at any time. The powers, duties, authority and title of the predecessor Collateral Trustee shall be terminated and cancelled without procuring the resignation of such predecessor and without any other formality (except for the consent of DOE referred to above and as may be required by applicable Requirements of Law) than appointment and designation of a successor in writing duly delivered to the predecessor and the Borrower. Such appointment and designation shall be full evidence of the right and authority to make the same and of all the facts therein recited, and this Agreement and the Trust Security Documents shall vest in such successor, without any further act, deed or conveyance, all the estates, properties, rights, powers, trusts, duties, authority and title of its predecessor; but such predecessor shall, nevertheless, on the written request of DOE, the Borrower, or the successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers, trusts, duties, authority and title of such predecessor hereunder and under the Trust Security Documents and shall deliver all Collateral held by it or its agents to such successor. Should any deed, conveyance or other instrument in writing from any Grantor be required by any successor Collateral Trustee for more fully and certainly vesting in such successor the estates, properties, rights, powers, trusts, duties, authority and title vested or intended to be vested in the predecessor Collateral Trustee, any and all such deeds, conveyances and other instruments in writing shall, on request of such successor, be executed, acknowledged and delivered by such Grantor. If such Grantor shall not have executed and delivered any such deed, conveyance or other instrument within ten (10) days after it received a written request from the successor Collateral Trustee to do so, or if a Notice of Default is in effect, the predecessor Collateral Trustee may execute the same on behalf of such Grantor. Such Grantor hereby appoints any predecessor Collateral Trustee as its agent and attorney to act for it as provided in the next preceding sentence.

(c) Notwithstanding anything to the contrary contained herein, Midland Loan Services, Inc., shall be automatically deemed to have resigned and discharged of its responsibilities hereunder effective on and as of November 24, 2014 (or, if later, on the ninetieth (90th) day after written notice from Midland Loan Services, Inc. to DOE advising DOE of such automatic resignation) whether or not a successor Collateral Trustee shall have been appointed in accordance with the terms of this Agreement prior to such date, unless otherwise agreed to in a writing signed by Midland Loan Services, Inc. and DOE.

5.8 Status of Successor Collateral Trustee. Unless DOE appoints itself as successor Collateral Trustee, every successor Collateral Trustee appointed pursuant to Section 5.7 shall be a bank or trust company (or wholly owned by a bank or trust company) in good standing and having power to act as Collateral Trustee hereunder, incorporated under the laws of the United States of America or any State thereof or the District of Columbia and having its principal corporate trust office within the forty-eight (48) contiguous States and shall also have capital, surplus and undivided profits of not less than $500,000,000, if there be such an institution with such capital, surplus and undivided profits willing, qualified and able to accept the trust hereunder upon reasonable or customary terms.

5.9 Merger of the Collateral Trustee. Subject to satisfying the requirements for a successor Collateral Trustee set forth in Section 5.8, any corporation into which the Collateral Trustee may be merged, or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Collateral Trustee shall be a party, shall be Collateral Trustee under this Agreement and the Trust Security Documents without the execution or filing of any paper or any further act on the part of the parties hereto.

5.10 Co-Collateral Trustee; Separate Collateral Trustee.

(a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or to avoid any violation of law or imposition on the Collateral Trustee of taxes by such jurisdiction not otherwise imposed on the Collateral Trustee, or the Collateral Trustee shall be advised by counsel, satisfactory to it, that it is necessary or prudent in the interest of the Secured Parties, or DOE shall in writing so request the Collateral Trustee and the Grantors, or the Collateral Trustee shall deem it desirable for its own protection in the performance of its duties hereunder or under any Trust Security Document, the Collateral Trustee and each of the Grantors shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company, or one or more persons. in each case, approved by the Collateral Trustee and the Grantors, either to act as co-trustee or co-trustees of all or any of the Collateral under this Agreement or under any of the Trust Security Documents, jointly with the Collateral Trustee originally named herein or therein or any successor Collateral Trustee, or to act as separate trustee or trustees of any of the Collateral. If any of the Grantors shall not have joined in the execution of such instruments and agreements within thirty (30) days after it receives a written request from the Collateral Trustee to do so, or if a Notice of Default is in effect, DOE may direct (with written notice of such direction to the Borrower) the Collateral Trustee to act under the foregoing provisions of this Section 5.10(a) without the concurrence of such Grantors and execute and deliver such instruments and agreements on behalf of such Grantors. Each of the Grantors hereby appoints the Collateral Trustee as its agent and attorney to act for it under the foregoing provisions of this Section 5.10(a) in either of such contingencies.

(b) Every separate trustee and every co-trustee, other than any successor Collateral Trustee appointed pursuant to Section 5.7, shall, to the extent permitted by law, be appointed and act and be such, subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred upon the Collateral Trustee in respect of the custody, control and management of moneys, papers or securities shall be exercised solely by the Collateral Trustee or any agent appointed by the Collateral Trustee;

(ii) all rights, powers, duties and obligations conferred or imposed upon the Collateral Trustee hereunder and under the relevant Trust Security Document or Documents shall be conferred or imposed and exercised or performed by the Collateral Trustee and such separate trustee or separate trustees or co-trustee or co-trustees, jointly, as shall be provided in the instrument appointing such separate trustee or separate trustees or co-trustee or co-trustees, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Collateral Trustee shall be incompetent or unqualified to perform such act or acts, or unless the performance of such act or acts would result in the imposition of any tax on the Collateral Trustee which would not be imposed absent such joint act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such separate trustee or separate trustees or co-trustee or co-trustees;

(iii) no power given hereby or by the relevant Trust Security Documents to, or which it is provided herein or therein may be exercised by, any such co-trustee or co-trustees or separate trustee or separate trustees shall be exercised hereunder or thereunder by such co-trustee or co-trustees or separate trustee or separate trustees except jointly with, or with the consent in writing of, the Collateral Trustee, anything contained herein to the contrary notwithstanding;

(iv) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(v) the Borrower and the Collateral Trustee, at any time by an instrument in writing executed by them jointly, may accept the resignation of or remove any such separate trustee or co-trustee and, in that case by an instrument in writing executed by them jointly, may appoint a successor to such separate trustee or co-trustee, as the case may be, anything contained herein to the contrary notwithstanding. If the Borrower shall not have joined in the execution of any such instrument within thirty (30) days after it receives a written request from the Collateral Trustee to do so, or if a Notice of Default is in effect, DOE may direct (with written notice of such direction to the Borrower) the Collateral Trustee to accept the resignation of or remove any such separate trustee or co-trustee and to appoint a successor without the concurrence of the Borrower, the Borrower hereby appointing the Collateral Trustee its agent and attorney to act for it in such connection in such contingency. If the Collateral Trustee shall have appointed a separate trustee or separate trustees or co-trustee or co-trustees as above provided, the Collateral Trustee may at any time, by an instrument in writing, accept the resignation of or remove any such separate trustee or co-trustee and the successor to any such separate trustee or co-trustee shall be appointed pursuant to Section 5.10(a) and this Section 5.10(b).

5.11 Treatment of Payee or Indorsee by Collateral Trustee; Representatives of Secured Parties. The Collateral Trustee may treat the registered holder or, if none, the payee or indorsee of any promissory note or debenture evidencing a Secured Obligation as the absolute owner thereof for all purposes and shall not be affected by any notice to the contrary, whether such promissory note or debenture shall be past due or not.

ARTICLE VI

MISCELLANEOUS

6.1 Amendments, etc. Solely with the written consent of the DOE (and without the consent of any other Secured Party), the Collateral Trustee and the Grantors may, from time to time, enter into any additional Security Documents or any written agreements supplemental hereto or to any Trust Security Document for the purpose of adding to, or waiving any provisions of, this Agreement or any Trust Security Document or changing in any manner the rights of the Collateral Trustee, the Secured Parties or the Grantors hereunder or thereunder. Upon the direction of DOE, the Collateral Trustee shall enter into any such Security Document or supplemental agreement; *provided* that no such Security Document or supplemental agreement shall amend, modify or waive any provision of Articles IV or V or alter the duties, rights or obligations of the Collateral Trustee hereunder or under the Trust Security Documents without the written consent of the Collateral Trustee. Any such Security Document or supplemental agreement shall be binding upon the Grantors, the Secured Parties and the Collateral Trustee and their respective successors and permitted assigns.

6.2 Delay and Waiver. No delay or omission in exercising any right, power, privilege or remedy under this Agreement or any other Loan Document, including any rights and remedies in connection with the occurrence of a Default or Event of Default shall impair any such right, power, privilege or remedy of the Collateral Trustee or the other Secured Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. All rights, powers, privileges and remedies, either under this Agreement or any other Loan Document or by law or otherwise afforded to any of the Collateral Trustee or the other Secured Parties, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that any of the Collateral Trustee or the other Secured Parties may otherwise have.

6.3 Notices. Unless otherwise specified herein or as required by applicable Requirements of Law, all notices, requests, demands or other communications given to any of the Grantors, the Collateral Trustee or DOE (or its designees) shall be given in writing (including by facsimile or electronic transmission in Electronic Format) and shall be deemed to have been duly given when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) Business Days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) Business Day after being deposited with such service, (iv) if

delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the facsimile number or address set forth with respect to such party on Schedule 6.3 hereto, or, at such other facsimile number or address as shall be designated by such party in a written notice to each other party hereto.

6.4 Severability. The holding by any court of competent jurisdiction that any remedy pursued by the Collateral Trustee or any other Secured Party hereunder is unavailable or unenforceable shall not affect in any way the ability of the Collateral Trustee or any other Secured Party to pursue any other remedy available to it. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement and shall not invalidate or render unenforceable any other provision hereof.

6.5 Limitation on Liability. No claim shall be made by any Grantor or any of its Affiliates against any Secured Party or any of their Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Loan Documents or any act or omission or event occurring in connection therewith; and each Grantor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

6.6 Successors and Assigns. This Agreement shall be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Collateral Trustee hereunder, to the benefit of the Collateral Trustee and its successors and assigns.

6.7 Further Assurances and Corrective Instruments. To the extent permitted by Requirements of Law, each Grantor shall, upon the written request of the Collateral Trustee, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, within a reasonable period of such request, such amendments or supplements hereto, and such further instruments, and take such further actions, as may be necessary in the Collateral Trustee's reasonable judgment to effectuate the intention, performance and provisions hereof.

6.8 Governing Law; Waiver Of Jury Trial.

(A) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICTS OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

6.9 Submission to Jurisdiction, Etc.

(a) Any legal action or proceeding against any Grantor with respect to or arising out of this Agreement may be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Grantor or any of its property may be found. By execution and delivery of this Agreement, each Grantor accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement. Each Grantor hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of forum non-conveniens or improper venue. Each Grantor agrees that a judgment obtained in any such action may be enforced in any other jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) Each Grantor hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 6.3 and that such mailing is sufficient to confer personal jurisdiction over such Grantor in any proceeding in any court referred to in Section 6.9(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 6.9(b) shall affect the right of the Collateral Trustee or any other Secured Party to serve process in any other manner permitted by law.

6.10 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding, and supersede all prior agreements and understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

6.11 Benefits of Agreement. Nothing in this Agreement or any other Loan Document, express or implied, shall give to any Person, other than DOE and any other Secured Party, the parties hereto and thereto and their successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Agreement.

6.12 Headings. Paragraph headings have been inserted in the Loan Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Loan Documents and shall not be used in the interpretation of any provision of the Loan Documents.

6.13 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

6.14 No Partnership; Etc. The Secured Parties and the Grantors intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Secured Parties and the Grantors or any other Person. The Secured Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Grantors or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and expenses in connection with or arising from the ownership, operation or occupancy of any Project or any other Collateral and to perform all obligations under the agreements and contracts relating to any Project or any other Collateral shall be the sole responsibility of the Grantors.

6.15 Termination and Release.

(a) Upon receipt by the Collateral Trustee from DOE of (x) written directions to cause the liens created by the Trust Security Documents to be released and discharged or (y) written notices from DOE pursuant to Section 12.21 of the Arrangement Agreement, the security interests created by the Trust Security Documents shall terminate forthwith and all right, title and interest of the Collateral Trustee in and to the Collateral shall revert to the Grantors, their successors and assigns.

(b) Upon the termination of the Collateral Trustee's security interest and the release of the Collateral in accordance with Section 6.15(a), the Collateral Trustee will promptly, at the Borrower's written request and expense, (i) execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence the termination of such security interest or the release of the Collateral and (ii) deliver or cause to be delivered to the Grantors all property of the Grantors then held by the Collateral Trustee or any agent thereof.

(c) Upon the sale of all the Capital Stock of a Grantor to any Person (other than another Grantor) in a transaction permitted by the Loan Documents and as long as no Event of Default has occurred and is continuing or no Notice of Default is then in effect: (i) such Grantor and each Subsidiary of such Grantor which is included in such sale (such Grantor and each such Subsidiary being referred to herein as "Included Grantors") shall cease to be a Grantor hereunder or a party to any Trust Security Document and shall be released automatically from its obligations pursuant hereto and thereto, (ii) the security interests created by the Trust Security Documents entered into by such Included Grantors in all right, title and interest of such Included Grantors in the Collateral, shall terminate automatically, in each case only with respect to such Included Grantors, (iii) all right, title and interest of the Collateral Trustee in and to the Collateral subject to such security interests shall revert automatically to such Included Grantors, their successors and assigns and (iv) any obligations of such Included Grantors shall, unless otherwise expressly notified by the Borrower to the Collateral Trustee and DOE in

writing, automatically cease to be Secured Obligations. Upon any such termination and receipt by the Collateral Trustee of a fully executed original certificate from a Responsible Officer of the Borrower stating that such sale is to a Person other than another Grantor in a transaction permitted by the Loan Documents, the Collateral Trustee will promptly, at the Borrower's request and expense, (x) execute and deliver to such Included Grantors such documents as the Borrower shall reasonably request to evidence the termination of such security interest or the release of such Collateral and (y) deliver or cause to be delivered to such Included Grantors all property of such Included Grantors then held by the Collateral Trustee or any agent thereof.

(d) Upon the sale of all or any portion of the Collateral to any Person (other than another Grantor) in a transaction permitted by the Loan Documents (including pursuant to any consent to such sale and /or release of the security interest in such Collateral pursuant to the terms thereof), and as long as no Event of Default has occurred and is continuing or no Notice of Default is then in effect, the security interests created by the Trust Security Documents in such Collateral shall terminate and such Collateral shall be automatically released from the Lien created by the Trust Security Documents. Upon any such release and receipt by the Collateral Trustee of a certificate from the Borrower or the relevant Grantor stating that such sale is permitted by (or the relevant consent has been received under) the Loan Documents, the Collateral Trustee will promptly at the Borrower's request and expense execute and deliver such documents as the Borrower shall reasonably request to evidence the termination of such security interest and the release of such Collateral.

(e) Upon receipt by the Collateral Trustee of written notice from DOE, directing the Collateral Trustee to cause the Liens on a portion of the Collateral identified in such notice to be released and discharged, the security interests created by the Trust Security Documents in such Collateral shall terminate forthwith and all right, title and interest of the Collateral Trustee in and to such Collateral shall revert to the Grantors, their successors and assigns.

(f) This Agreement shall terminate when the security interest granted under the Trust Security Documents has terminated and the Collateral has been released as provided in Section 6.15(a); *provided* that the provisions of Sections 4.3 and 4.4 shall not be affected by any such termination.

6.16 Independence of Covenants. As between the Collateral Trustee, on the one hand, and the Grantors on the other, in the event of any conflict between the terms of this Agreement and the terms of any Trust Security Document, the terms of such Trust Security Document shall control.

6.17 Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to the terms of any Loan Document, or that the Borrower desires to become a party to this Agreement, shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Subsidiary Joinder Agreement.

6.18 Rights and Immunities of DOE. DOE will be entitled to all of the rights, protections, immunities and indemnities set forth in the other Loan Documents with respect to DOE's acting as representative of the Secured Parties, in each case as if specifically set forth herein. In no event will DOE be liable for any act or omission on the part of the Grantors or the Collateral Trustee hereunder.

[No further text on this page; signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

TESLA MOTORS, INC.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

ANNEX I

Trust Security Documents

1. Pledge and Security Agreement, dated as of January 20, 2010, made by Tesla Motors, Inc. and the other Grantors from time to time party thereto, in favor of the Collateral Trustee.

2. Notices of Grant of Security Interest in Patents, dated as of January 20, 2010, made by Tesla Motors, Inc. and in favor of the Collateral Trustee.

3. Notice of Grant of Security Interest in Trademarks, dated as of January 20, 2010, made by Tesla Motors, Inc. in favor of the Collateral Trustee.

4. Restricted Account And Securities Account Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Collateral Trustee and Wells Fargo Bank, National Association, as deposit bank.

5. Securities Account Control - Consent Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Collateral Trustee and Wells Fargo Securities, LLC, as securities intermediary.

6. Deposit Account Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Collateral Trustee and City National Bank, as deposit bank.

7. Deposit Account Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Collateral Trustee and HSBC, as deposit bank.

8. Blocked Account Control Agreements, to be dated on or about January 20, 2010, among Tesla Motors, Inc., the Collateral Trustee and PNC Bank, National Association, as deposit bank.

9. UCC-1 Financing Statements, dated as of January 20, 2010, naming Tesla Motors, Inc. and Tesla Motors New York LLC as debtors and the Collateral Trustee as secured party.

10. Fixture Filing, dated as of January 20, 2010, naming Tesla Motors, Inc. as debtor and the Collateral Trustee as secured party.

EXHIBIT A

FORM OF NOTICE OF DEFAULT

[Date]

To: Midland Loan Services, Inc., as Collateral Trustee

Re: Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc. (the "Borrower"), any subsidiaries of the Borrower parties thereto (together with the Borrower, the "Grantors") and Midland Loan Services, Inc., as Collateral Trustee (the "Collateral Trust Agreement").

To DOE's knowledge, an Event of Default under the Loan Documents has occurred and is continuing.

Terms defined in the Collateral Trust Agreement and used herein shall have the meanings given to them in the Collateral Trust Agreement.

UNITED STATES DEPARTMENT OF ENERGY

By:_____,
Name:
Title:

SCHEDULE 6.3

NOTICE ADDRESSES

If to the Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

If to any Grantor:

c/o Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Financial Officer
Telephone No.: (650) 701-2690
Facsimile No.: (650) 701-2612
Email Address: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

c/o Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel
Telephone No.: (650) 413-4000
Facsimile No.: (650) 701-2620
Email Address: generalcounseldoe@teslamotors.com

If to DOE:

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-8146
Facsimile: (202) 586-7809
Email: teslaatvmtransaction@hq.doe.gov

with a copy to (which copy shall not constitute notice):

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Telephone: (202) 586-5281
Facsimile: (202) 586-1499
Email: teslaatvmtransaction@hq.doe.gov

EXECUTION VERSION

PLEDGE AND SECURITY AGREEMENT

made by

TESLA MOTORS, INC.

and any of its Subsidiaries that becomes a Grantor hereunder

in favor of

MIDLAND LOAN SERVICES, INC.

as Collateral Trustee

Dated as of January 20, 2010

TABLE OF CONTENTS

PAGE

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION 2
1.1 Definitions 2
1.2 Other Rules of Construction 6

ARTICLE II GRANT OF SECURITY INTEREST 8
2.1 Grant of Security Interest 8
2.2 Certain Limited Exclusions 9
2.3 Security for Obligations 9
2.4 Continuing Liability Under Collateral 9
2.5 Additional Grantors 9
2.6 Additional Security 10

ARTICLE III REPRESENTATIONS AND COVENANTS 10
3.1 Generally 10
3.2 Equipment and Inventory 13
3.3 Receivables 14
3.4 Pledged Collateral. 16
3.5 Securities Accounts. 20
3.6 Deposit Accounts. 22
3.7 Intellectual Property 23
3.8 Further Assurances 24

ARTICLE IV REMEDIES 26
4.1 Code and Other Remedies Generally 26
4.2 Sales on Credit 27
4.3 Private Sale of Investment Property 27
4.4 Additional Remedies Relating to Intellectual Property 28
4.5 Collection of Receivables 30
4.6 Turn Over and Application of Proceeds 30
4.7 Deficiency 31
4.8 Marshaling 31

ARTICLE V COLLATERAL TRUSTEE 31
5.1 Power of Attorney 31
5.2 Authorization to File Financing Statements 32
5.3 Access; Right of Inspection 33
5.4 Duty of Collateral Trustee 33
5.5 Collateral Trustee May Perform 33
5.6 Authority of Collateral Trustee 33
5.7 Successor Collateral Trustee 34

ARTICLE VI MISCELLANEOUS 34
6.1 Amendments, etc. 34

6.2 Delay and Waiver 34
6.3 Right of Set-Off 34
6.4 Survival of Representations and Warranties 35
6.5 Notices 35
6.6 Severability 35
6.7 Judgment Currency 35
6.8 Indemnification 36
6.9 Limitation on Liability 36
6.10 Successors and Assigns 36
6.11 Further Assurances and Corrective Instruments 37
6.12 Reinstatement 37
6.13 Governing Law; Waiver Of Jury Trial 37
6.14 Submission to Jurisdiction, Etc. 37
6.15 Entire Agreement 38
6.16 Benefits of Agreement 38
6.17 Headings 38
6.18 Counterparts 38
6.19 No Partnership; Etc. 38
6.20 Releases 39
6.21 Independence of Covenants 39
6.22 Additional Grantors 39

EXHIBITS

Exhibit A	Form of Uncertificated Securities Control Agreement
Exhibit B	Form of Securities Account Control Agreement
Exhibit C	Form of Deposit Account Control Agreement
Exhibit D	Form of Patent Security Agreement
Exhibit E	Form of Trademark Security Agreement
Exhibit F	Form of Copyright Security Agreement

PLEDGE AND SECURITY AGREEMENT, dated as of January 20, 2010 (this "Agreement"), made by TESLA MOTORS, INC., a Delaware corporation (the "Borrower"), and each of the SUBSIDIARIES OF THE BORROWER listed on the signature pages hereof or that becomes a party hereto as provided herein (collectively with the Borrower, the "Grantors"), in favor of MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Collateral Trust Agreement"), among the Borrower, the Subsidiaries of the Borrower parties thereto and the Collateral Trustee.

PRELIMINARY STATEMENTS

A. Pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (as amended, supplemented or otherwise modified from time to time, the "Arrangement Agreement"), between the Borrower and the United States Department of Energy ("DOE"), DOE has agreed to arrange for the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("FFB"), to purchase certain future advance promissory notes (as amended, supplemented or otherwise modified from time to time, the "Notes") to be issued by the Borrower pursuant to the Note Purchase Agreement, dated as of January 20, 2010, among the Borrower, DOE and FFB (as amended, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), and to make extensions of credit to the Borrower from time to time upon the terms and subject to the conditions set forth in the Notes and the other Loan Documents.

B. Pursuant to the Program Financing Agreement, dated as of September 16, 2009, between DOE and FFB, DOE will be obligated to reimburse FFB for any liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the Notes or the related Note Purchase Agreement.

C. The proceeds of the extensions of credit under the Funding Agreements will be used by the Borrower to fund Eligible Project Costs incurred by the Borrower under the Advanced Technology Vehicles Manufacturing Incentive Program administered by DOE.

D. It is a condition precedent to the obligation of DOE under the Arrangement Agreement to deliver the Principal Instruments required for FFB to purchase the Notes under the Note Purchase Agreement that the Grantors shall have executed and delivered this Agreement to the Collateral Trustee for the ratable benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the premises and to induce DOE to enter into the Arrangement Agreement and to induce FFB to enter into the Note Purchase Agreement, purchase the Notes and make extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Collateral Trustee, for the ratable benefit of the Secured Parties, as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in the Arrangement Agreement or, if not defined therein, in the UCC. In addition, the following terms shall have the following meanings:

"Account Debtor" means each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

"Accounts" means all "accounts" as defined in Article 9 of the UCC.

"Additional Grantors" has the meaning given to such term in Section 2.5.

"Agreement" has the meaning given to such term in the preamble.

"Arrangement Agreement" has the meaning given to such term in the preliminary statements.

"Borrower" has the meaning given to such term in the preamble.

"Certificate-of-Title Equipment" means any property which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, other than inventory of a Person in the business of selling or leasing goods of that kind to the extent Section 9-311(d) is applicable thereto.

"Chattel Paper" means all "chattel paper" as defined in Article 9 of the UCC, including "electronic chattel paper" or "tangible chattel paper", as each term is defined in Article 9 of the UCC, and includes, in any event, all chattel paper, if any, listed on the Collateral Schedules.

"Collateral" has the meaning given to such term in Section 2.1.

"Collateral Records" means books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software (whether in source code or object code), computer printouts, tapes, disks and related data processing software and similar items in whatever form that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or would reasonably be considered materially useful or helpful in the collection thereof or realization thereupon.

"Collateral Support" means all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"Collateral Trustee" has the meaning given to such term in the preamble.

"Collateral Trust Agreement" has the meaning given to such term in the preamble.

"Commercial Tort Claims" means all "commercial tort claims" as defined in Article 9 of the UCC and includes, in any event (and in particular for purposes of the grant of security interest under Section 2.1(c)), all commercial tort claims listed on the Collateral Schedules.

"Commodity Accounts" means all "commodity accounts" as defined in Article 9 of the UCC.

"Deposit Accounts" means all "deposit accounts" as defined in Article 9 of the UCC and includes, in any event, all certificates of deposit that are not Instruments and all of the accounts listed on the Collateral Schedules under the heading "Deposit Accounts".

"Documents" means all "documents" as defined in Article 9 of the UCC.

"DOE" has the meaning given to such term in the preliminary statements.

"Equipment" means all "equipment" as defined in Article 9 of the UCC and includes, in any event, (i) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, Fixtures, motor vehicles and tools (in each case, regardless of whether characterized as equipment under the UCC but excluding motor vehicles held as inventory) and (ii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing.

"FFB" has the meaning given to such term in the preliminary statements.

"Fixtures" means all "fixtures" as defined in Article 9 of the UCC.

"General Intangibles" means all "general intangibles" (including "payment intangibles") as defined in Article 9 of the UCC and includes, in any event, all of the following (in each case, regardless of whether characterized as general intangibles under the UCC): all Hedging Transactions; all Intellectual Property and licenses of Intellectual Property; all Governmental Approvals; all Project Documents; all tax refunds; all intercompany agreements; and all other contract rights and other intangible rights.

"Goods" means all "goods" as defined in Article 9 of the UCC and includes, in any event, all Inventory and Equipment.

"Grantors" has the meaning given to such term in the preamble.

"Instruments" means all "instruments" as defined in Article 9 of the UCC.

"Insurance" means (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Trustee or any other Secured Party is the loss payee

thereof), (ii) any key man life insurance or business interruption policies and (iii) all other insurance policies owned by any Grantor.

"Intellectual Property" has the meaning given to such term in the Arrangement Agreement and includes, in any event, all of the trademarks, trade names, domain names, patents, patent applications, copyrights, trade secrets and know-how listed on the Collateral Schedules.

"Inventory" means all "inventory" as defined in Article 9 of the UCC and includes, in any event, all of the following (in each case, regardless of whether characterized as inventory under the UCC): all goods (including motor vehicles) held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor's business; all goods in which any Grantor has an interest in mass or a joint interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, and all computer programs embedded in any goods of the kind described above and all accessions thereto and products thereof.

"Investment Property" means all "investment property" and all "financial assets" (as such terms are defined in Article 9 and Article 8, respectively, of the UCC) and includes, in any event, all of the following (in each case, regardless of whether characterized as investment property or financial assets under the UCC): all Pledged Equity Interests, all Pledged Debt, all Securities Accounts, all Commodity Accounts and all other investment property, if any, listed on the Collateral Schedules under the heading "Other Investment Property".

"Letter of Credit Right" means "letter-of-credit right" as defined in Article 9 of the UCC and includes, in any event, each letter of credit issued in favor of any Grantor, if any, listed on the Collateral Schedules.

"Money" means "money" as defined in Article 1 of the UCC.

"Note Purchase Agreement" has the meaning given to such term in the preliminary statements.

"Notes" has the meaning given to such term in the preliminary statements.

"Pledged Collateral" means, collectively, all Pledged Equity Interests, all Pledged Debt and all other Investment Property other than any Securities Accounts or Commodity Accounts.

"Pledged Debt" means all Indebtedness owed to any Grantor (including all certificates of deposit that are Instruments and all intercompany Indebtedness) and includes, in any event, all promissory notes and Instruments, if any, listed on the Collateral Schedules, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"Pledged Equity Interests" means, collectively, all Pledged Stock, all Pledged LLC Interests, all Pledged Partnership Interests and all Pledged Trust Interests.

"Pledged LLC Interests" means all interests in any limited liability company and includes, in any event, all limited liability company interests, if any, listed on the Collateral Schedules and the certificates, if any, representing such limited liability company interests and any interest of any Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests, other than any Excluded Property.

"Pledged Partnership Interests" means all interests in any general partnership, limited partnership, limited liability partnership or other partnership and includes, in any event, all partnership interests, if any, listed on the Collateral Schedules and the certificates, if any, representing such partnership interests and any interest of any Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests, other than any Excluded Property.

"Pledged Stock" means all shares of or other interests in Capital Stock of any corporation or other entity (other than any limited liability company, partnership or trust) and includes, in any event, all Capital Stock listed on the Collateral Schedules under the heading "Pledged Equity Interests" and the certificates, if any, representing all such shares or other interests and any interest of any Grantor in the entries on the books of the issuer of such shares or other interests or on the books of any securities intermediary pertaining to such shares or other interests, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares or other interests, other than any Excluded Property.

"Pledged Trust Interests" means all interests in a Delaware business trust or other trust and includes, in any event, all trust interests, if any, listed on the Collateral Schedules and the certificates, if any, representing such trust interests and any interest of any Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests, other than any Excluded Property.

"Proceeds" means all "proceeds" as defined in Article 9 of the UCC and includes, in any event, all payments or distributions made with respect to any other item of Collateral and whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"Receivables" means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Property, together with all of any Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"Receivables Records" means (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

"Record" has the meaning given to such term in Article 9 of the UCC.

"Secured Parties" means, collectively, the Collateral Trustee, DOE, FFB and any other holder of any Secured Obligations outstanding at any time.

"Securities Accounts" means all "securities accounts" as defined in Article 8 of the UCC and includes, in any event, all of the accounts listed on the Collateral Schedules under the heading "Securities Accounts".

"Supporting Obligations" means all "supporting obligations" as defined in Article 9 of the UCC.

"UCC" means the Uniform Commercial Code as adopted and in effect in the State of New York.

"UCC Filing Jurisdictions" means (i) for any Grantor that is a corporation, limited liability company or limited partnership, the jurisdiction of organization for such Grantor as listed on the Organizational Information Schedule and (ii) for any other Grantor, the jurisdiction where its chief executive office or its sole place of business is (or the principal residence if such Grantor is a natural person) as listed on the Organizational Information Schedule.

1.2 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Agreement denoting one gender only shall be construed to include the other gender;

(b) when used in this Agreement, the words "including", "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Agreement, the words "herein", "hereby", "hereunder", "hereof", "hereto", "hereinbefore", and "hereinafter", and words of similar import, unless otherwise specified, shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(d) each reference in this Agreement to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(e) capitalized terms in this Agreement referring to any Person or party to any Loan Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(f) each reference in this Agreement to any Loan Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Loan Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(g) each reference in this Agreement to any Requirements of Law shall be construed as a reference to such Requirements of Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(h) each reference in this Agreement to any provision of any other Loan Document will include reference to any definition or provision incorporated by reference within that provision;

(i) 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, Capital Stock, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights;

(j) the word "will" shall be construed as having the same meaning and effect as the word "shall"; and

(k) where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

ARTICLE II
GRANT OF SECURITY INTEREST

2.1 Grant of Security Interest. Each Grantor hereby grants to the Collateral Trustee, for the ratable benefit of the Secured Parties, a First Priority security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under all property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the "Collateral"):

(a) Accounts;

(b) Chattel Paper;

(c) Commercial Tort Claims;

(d) Deposit Accounts;

(e) Documents;

(f) Equipment;

(g) General Intangibles;

(h) Instruments;

(i) Insurance;

(j) Inventory;

(k) Investment Property;

(l) Letter of Credit Rights;

(m) Money;

(n) to the extent not otherwise included above, all Goods, Fixtures and Receivables;

(o) to the extent not otherwise included above, all Intellectual Property, together with the right to sue (and collect damages) for past, present or future infringement or misappropriation thereof;

(p) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the security interest granted under Section 2.1 attach to any Excluded Property. For the avoidance of doubt, it is understood that under no circumstances shall "Excluded Property" be construed to include any Program Assets.

2.3 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under 11 U.S.C. § 362(a) (and any successor provision thereof)), of all Secured Obligations with respect to every Grantor.

2.4 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (a) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties thereunder to the Collateral Trustee or any other Secured Party, (b) each Grantor shall remain liable under each of the agreements included in the Collateral to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Trustee nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Trustee nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral and (c) the exercise by the Collateral Trustee of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the agreements included in the Collateral.

2.5 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "Additional Grantor"), by executing and delivering to the Collateral Trustee a Subsidiary Joinder Agreement (together with updates to the Collateral Schedules reflecting the property of such Additional Grantor), or such other documentation as may be reasonably acceptable to the Collateral Trustee, in accordance with Section 7.6(a) of the Arrangement Agreement. Upon delivery of any such Subsidiary Joinder Agreement or other documentation to the Collateral Trustee, notice of which is hereby waived by the other Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Trustee or DOE not to cause any Subsidiary of the Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party

hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

2.6 Additional Security. Without notice to or consent of any Grantor, and without impairment of the security interest and rights granted pursuant to this Agreement, any Secured Party may accept from any Grantor or from any other Person, additional security for the Secured Obligations and, in any event, each Grantor may become obligated from time to time to grant additional security for the Secured Obligations pursuant to Section 7.6 of the Arrangement Agreement or otherwise. Neither the granting of the security interest in the Collateral pursuant to this Agreement nor the acceptance of any such additional security shall prevent any such Secured Party from resorting first to such additional security, or first to the Collateral, in either case without affecting such Secured Party's security interest in the Collateral and the other rights granted to it pursuant to this Agreement.

ARTICLE III
REPRESENTATIONS AND COVENANTS

3.1 Generally.

(a) Representations Relating to All Collateral. Each Grantor hereby represents and warrants that:

(i) each Grantor owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons, including liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, other than Permitted Liens;

(ii) the Organizational Information Schedule sets forth for each Grantor (A) its full legal name, (B) its jurisdiction and type of organization, (C) if applicable, its organizational identification number, (D) if applicable, its Federal employer identification number and (E) the jurisdiction where its chief executive office or its sole place of business is (or the principal residence if such Grantor is a natural person);

(iii) upon (A) the filing in the applicable UCC Filing Jurisdictions of all UCC financing statements naming each Grantor as "debtor" and the Collateral Trustee as "secured party" and describing the Collateral in accordance with Section 5.2 (which financing statements have been delivered to the Collateral Trustee in completed and duly authorized form for filing), (B) execution of a control agreement establishing the Collateral Trustee's "control" (within the meaning of Section 9-104 of the UCC) with respect to any Deposit Accounts (other than Excluded Accounts), and (C) to the extent not subject to Article 9 of the UCC, recordation of the security interests granted hereunder in

registered or issued Intellectual Property in the applicable intellectual property registries, including the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Trustee hereunder constitute valid and perfected First Priority Liens on all of the Collateral (except Excluded Accounts and except to the extent that additional actions (collectively, the "Additional Perfection Actions") are required to be taken with respect to Certificate-of-Title Equipment, Letter of Credit Rights, Insurance, Commercial Tort Claims and any Collateral not located in the United States or any state thereof or not owned by a Grantor organized under the laws of the United States or any state thereof), and no additional or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any jurisdiction to establish and maintain such First Priority Liens except (1) as provided under the UCC with respect to the filing of continuation statements, (2) as provided under the UCC with respect to any changes made after the date hereof, and (3) as may be required with respect to any Additional Perfection Actions;

(iv) other than the filings referred to in Section 3.1(a)(iii), no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (A) financing statements for which proper termination statements have been delivered to the Collateral Trustee for filing and (B) financing statements filed in connection with Permitted Liens;

(v) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Trustee hereunder or (B) the exercise by the Collateral Trustee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (1) for the filings contemplated by Section 3.1(a)(iii), (2) any Required Consents, which have been obtained and are in full force and effect, and (3) as may be required in connection with the disposition of any Investment Property by laws generally affecting the offering and sale of securities;

(vi) as of the Principal Instrument Delivery Date (or, in the case of any Additional Grantor, as of the date of its Subsidiary Joinder Agreement), none of the Grantors (A) is a beneficiary under any letters of credit; (B) has any rights in any Commercial Tort Claims; or (C) owns any key personnel life insurance policies except as disclosed on the Collateral Schedules;

(vii) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC); and

(viii) none of the Grantors owns (A) any "as extracted collateral" (as defined in the UCC), (B) any timber to be cut, (C) any aircraft or ships or (D) any Commodity Accounts.

(b) Covenants Relating to All Collateral. Each Grantor hereby covenants and agrees that:

(i) it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein other than Permitted Liens;

(ii) except to the extent contemplated by clause (c) of the definition of "First Priority", it shall not take any action to cause or permit any Permitted Lien to be a prior Lien on any of the Collateral, including by delivery to any Person other than the Collateral Trustee or DOE of any instrument, tangible chattel paper or investment property evidenced by certificates or granting "control" (within the meaning of the applicable provision of the UCC) over any Collateral to any Person other than the Collateral Trustee or DOE;

(iii) it shall not produce, use or permit any Collateral to be used in violation, in any material respect, of any applicable Requirements of Law or any policy of insurance covering the Collateral;

(iv) it shall not change any of the information set forth for such Grantor on the Organizational Information Schedule except to the extent permitted by Section 7.6(g) of the Arrangement Agreement, and upon the effective date of any such change it shall deliver to the Collateral Trustee a completed Collateral Supplement reflecting an updated Organizational Information Schedule;

(v) it shall pay promptly when due all material property and other material taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral, except to the extent permitted by Section 7.16 of the Arrangement Agreement;

(vi) promptly upon its obtaining Knowledge thereof, it shall notify the Collateral Trustee in writing of the imposition of any Lien (other than Permitted Liens) on any of the Collateral or any other event that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the value of the Collateral or any material portion thereof, the ability of any Grantor or the Collateral Trustee to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Trustee in relation thereto, including the levy of any legal process against the Collateral or any portion thereof;

(vii) it shall not take or permit any action which could reasonably be expected to impair the Collateral Trustee's rights in the Collateral except for Permitted Liens and transactions permitted under and in compliance with Section 9.5 of the Arrangement Agreement; and

(viii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as otherwise permitted under Section 9.5 of the Arrangement Agreement.

3.2 Equipment and Inventory.

(a) Additional Representations for Equipment and Inventory. Each Grantor represents and warrants that:

(i) all of the Equipment and Inventory included in the Collateral (other than (i) goods in transit, (ii) motor vehicles used for demonstration or publicity purposes in the ordinary course of business and (iii) movable Equipment other than motor vehicles (such as laptop computers) located with employees in the ordinary course of business) is kept only at the locations listed on the Collateral Schedules or other locations identified to the Collateral Trustee pursuant to Section 3.2(b)(i);

(ii) any Goods now or hereafter produced by any Grantor included in the Collateral have been and will be produced in compliance in all material respects with the requirements of the Fair Labor Standards Act, as amended (to the extent the Fair Labor Standards Act is applicable to such Goods);

(iii) none of the Inventory or Equipment is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor or otherwise in the possession of a bailee or a warehouseman, except as listed on the Collateral Schedules or otherwise identified to the Collateral Trustee pursuant to Section 3.2(b)(i); and

(iv) the aggregate value of all Certificate-of-Title Equipment owned by the Grantors at any time for which the steps described in Section 3.2(b)(iv) have not been taken does not exceed $2,500,000.

(b) Additional Covenants for Equipment and Inventory. Each Grantor covenants and agrees that:

(i) it shall keep the Equipment, Inventory and any Documents evidencing any Equipment and Inventory (other than (i) goods in transit, (ii) motor vehicles used for demonstration or publicity purposes in the ordinary course of business and (iii) movable Equipment other than motor vehicles (such as laptop computers) located with employees in the ordinary course of business) in the locations listed on the Collateral Schedules unless it shall have (A) notified the Collateral Trustee in writing prior to any change in locations by delivering a Collateral Supplement identifying such new locations and providing such other information in connection therewith as the Collateral Trustee may reasonably request and (B) taken all actions necessary or reasonably requested by the Collateral Trustee to maintain the continuous validity, perfection and the same or better priority of the Collateral Trustee's security interest in the Collateral

intended to be granted and agreed to hereby, or to enable the Collateral Trustee to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory (including by providing Collateral Access Agreements as required by Section 7.6(d) of the Arrangement Agreement);

(ii) it shall keep complete and accurate records of the Equipment and Inventory in all material respects;

(iii) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Trustee;

(iv) with respect to any Certificate-of-Title Equipment with an aggregate value in excess of $2,500,000, it shall (A) notify the Collateral Trustee thereof by delivery of a Collateral Supplement setting forth such information, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Collateral Trustee copies of all such certificates of title indicating the security interest created hereunder in the items of Equipment covered thereby; and

(v) (i) with respect to any Site, it shall (A) prepare and file with the appropriate authorities in the applicable jurisdiction all necessary fixture filings with respect to all Fixtures at any time located at such Site, and (B) deliver to the Collateral Trustee copies of all such recorded fixture filings, and (ii) with respect to any other location owned or leased by any Grantor, in the event there shall be any Fixtures at such location with an aggregate book value in excess of $250,000, it shall (A) notify the Collateral Trustee with respect to any such location by delivery of a Collateral Supplement setting forth such information, (B) upon the request of the Collateral Trustee, prepare and file with the appropriate authorities in the applicable jurisdiction all necessary fixture filings with respect to all Fixtures owned by Grantor at any time at such location, and (C) deliver to the Collateral Trustee copies of all such recorded fixture filings.

3.3 Receivables.

(a) Additional Representations for Receivables. Each Grantor represents and warrants that:

(i) none of the Account Debtors in respect of Receivables with a value in excess of $1,000,000 in the aggregate is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign, other than such Receivables as to which (a) such Grantor has notified the Collateral Trustee and DOE in writing by delivery of a Collateral Supplement setting forth such information and (b) taken all steps required under Section 7.6(f)(iii) of the Arrangement Agreement; and

(ii) no Receivable is evidenced by, or constitutes, an Instrument or Chattel Paper with an aggregate value in excess of $250,000 which has not been delivered to, or otherwise subjected to the control of, the Collateral Trustee to the extent required by, and in accordance with, Section 3.3(c).

(b) Additional Covenants for Receivables: Each Grantor hereby covenants and agrees that:

(i) it shall keep complete and accurate records of the Receivables in all material respects, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) at the request of the Collateral Trustee, it shall mark conspicuously, in form and manner reasonably satisfactory to the Collateral Trustee, all Chattel Paper, Instruments and other evidence of Receivables (other than any delivered to the Collateral Trustee as provided herein), as well as the Receivables Records with an appropriate reference to the fact that the Collateral Trustee has a security interest therein;

(iii) it shall not amend, modify, terminate or waive any provision of any Receivable in any manner which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and, other than in the ordinary course of business in a manner that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (but subject to Section 4.5), such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon; and

(iv) except as otherwise provided in Section 4.5, each Grantor shall continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable, any Supporting Obligation or Collateral Support, in each case, at its own expense; and

(v) it shall comply with Section 7.6(f)(iii) of the Arrangement Agreement with respect to all Applicable Governmental Claims.

(c) Delivery and Control of Receivables. With respect to any Receivables in excess of $250,000 individually that are evidenced by, or constitute, Chattel Paper or Instruments, each Grantor shall deliver to the Collateral Trustee a completed Collateral Supplement reflecting such Chattel Paper or Instruments and shall cause each originally executed copy of such Chattel Paper or Instruments to be delivered

to the Collateral Trustee (or its agent or designee) appropriately indorsed to the Collateral Trustee or indorsed in blank: (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within thirty (30) days of such Grantor acquiring rights therein. With respect to any Receivables in excess of $250,000 individually, which would constitute "electronic chattel paper" under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Collateral Trustee control over such Receivables (within the meaning of Section 9-105 of the UCC): (x) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (y) with respect to any such Receivables hereafter arising, within thirty (30) days of such Grantor acquiring rights therein. Any Receivable not otherwise required to be delivered or subjected to the control of the Collateral Trustee in accordance with this clause (c) shall be delivered or subjected to such control upon request of the Collateral Trustee upon the occurrence and during the continuance of an Event of Default.

3.4 Pledged Collateral.

(a) Additional Representations for Pledged Collateral. Each Grantor hereby represents and warrants that:

(i) The Collateral Schedules set forth under the heading "Pledged Equity Interests" set forth all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedules;

(ii) it is the record and beneficial owner of the Pledged Equity Interests purported to be owned by it free of all Liens (other than Permitted Liens), rights or claims of other Persons and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests other than as permitted under the Arrangement Agreement;

(iii) without limiting the generality of Section 3.1(a)(v), no consent (other than the Required Consents, which have been obtained and are in full force and effect and as may be required in connection with the disposition of any Pledged Collateral by laws generally affecting the offering and sale of securities) of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or advisable in connection with the creation, perfection or first priority status of the security interest of the Collateral Trustee in any Pledged Equity Interests or the exercise by the Collateral Trustee of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(iv) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (1) are registered as investment companies, (2) are dealt in or traded on securities exchanges or markets or (3) have opted to be treated as securities under the Uniform Commercial Code of any jurisdiction unless such Grantor shall have notified the Collateral Trustee in writing thereof and shall have taken all steps necessary or reasonably requested by the Collateral Trustee to establish the Collateral Trustee's "control" thereof (within the meaning of Sections 8-106 and 9-106 of the UCC);

(v) the Collateral Schedules set forth all of the Pledged Debt with a value in excess of $250,000 in the aggregate, if any, owned by any Grantor and, to the Knowledge of the Grantors, all of such Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof;

(vi) the Grantors have not consented to, and are not otherwise aware of, any Person (other than the Collateral Trustee) having "control" (within the meaning of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any Pledged Collateral owned by the Grantors; and

(vii) except as otherwise indicated in the Collateral Schedules, each Foreign Subsidiary that is not a Grantor is a Controlled Foreign Corporation.

(b) Additional Covenants for Pledged Collateral. Each Grantor hereby covenants and agrees that:

(i) if such Grantor acquires rights in any Pledged Collateral after the date hereof, it shall deliver to the Collateral Trustee a completed Collateral Supplement reflecting such new Pledged Collateral;

(ii) if such Grantor receives any dividends or distributions on any Pledged Equity, any payment of principal, interest or other amounts in respect of any Pledged Debt or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Pledged Collateral, then (1) such dividends, distributions, payments and securities or other property shall be included in the definition of Collateral without further action and (2) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the Collateral Trustee over such property (including delivery thereof to the Collateral Trustee) and pending any such action such Grantor shall be deemed to hold such property in trust for the benefit of the Collateral Trustee and shall segregate such property from all other property of such Grantor; *provided*, so long as no Event of Default shall have occurred and be continuing, each Grantor may retain all ordinary cash dividends and distributions and other cash paid in the normal course of the business of the issuer *provided, further* that no Pledged Debt shall be required to be delivered to Collateral Trustee except as provided in Section 3.4(c)(i);

(iii) it shall not vote to enable or take any other action to:

(A) amend or terminate, or waive any provision of, any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Pledged Collateral or adversely affects the validity, perfection or priority of the Collateral Trustee's security interest except in connection with a transaction expressly permitted under the Arrangement Agreement, or

(B) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; *provided, however*, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (B), such Grantor shall promptly notify the Collateral Trustee in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Collateral Trustee's "control" thereof (within the meaning of Sections 8-106 and 9-106 of the UCC);

(iv) it shall comply with all of its obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests in all material respects and shall enforce all of its material rights with respect to any Pledged Collateral except to the extent such failure to do so could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect;

(v) each Grantor consents to the grant by each other Grantor of a security interest in all Pledged Collateral to the Collateral Trustee and, without limiting the foregoing, consents to the transfer of any Pledged Collateral to the Collateral Trustee or its nominee following an Event of Default and to the substitution of the Collateral Trustee or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto; and

(vi) it shall notify the Collateral Trustee of any default under any Pledged Debt that is reasonably likely to cause, either in any individual case or in the aggregate, a Material Adverse Effect.

(c) Delivery and Control of Pledged Collateral.

(i) Each Grantor agrees that with respect to any Pledged Collateral in which it currently has rights it shall comply with the provisions of this Section 3.4(c)(i) on or before the Principal Instrument Delivery Date and with

respect to any Pledged Collateral hereafter acquired by such Grantor it shall comply with the provisions of this Section 3.4(c)(i) immediately upon acquiring rights therein, in each case in form and substance reasonably satisfactory to the Collateral Trustee. With respect to any Pledged Collateral that is represented by a certificate or that is an Instrument (other than any Pledged Collateral credited to a Securities Account) with a value in excess of $250,000 it shall cause such certificate or Instrument to be delivered to the Collateral Trustee, indorsed in blank by an "effective endorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate or Instrument constitutes a "certificated security" for purposes of the UCC. With respect to any Pledged Collateral that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall cause the issuer of such uncertificated security to either (1) register the Collateral Trustee as the registered owner thereof on the books and records of the issuer or (2) execute a control agreement substantially in the form of the Uncertificated Securities Control Agreement attached as Exhibit A hereto or otherwise in form and substance reasonably satisfactory to the Collateral Trustee, pursuant to which, among other things, such issuer agrees to comply with the Collateral Trustee's instructions with respect to such uncertificated security without further consent by such Grantor.

(ii) In addition to the foregoing, if any issuer of any Pledged Collateral is located in a jurisdiction outside of the United States and the value of such issuer is determined at the time by DOE to be material to the interests of the Secured Parties, upon the request of the Collateral Trustee, each Grantor shall take such additional actions, including causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Trustee.

(iii) The Collateral Trustee shall have the right upon the occurrence and during the continuance of an Event of Default, without notice to any Grantor, to exchange any certificates or instruments representing any Pledged Collateral for certificates or instruments of smaller or larger denominations.

(iv) Upon the occurrence and during the continuance of an Event of Default, the Collateral Trustee shall have the right, without notice to any Grantor, to transfer all or any portion of the Pledged Collateral to its name or the name of its nominee or agent.

(d) Voting and Other Consensual Rights.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) except as otherwise provided in this Agreement or in the Arrangement Agreement, each Grantor shall be entitled to exercise

or refrain from exercising any and all voting and other consensual rights pertaining to the Pledged Collateral for any purpose not inconsistent with the terms of this Agreement or the Arrangement Agreement; *provided*, no Grantor shall exercise or refrain from exercising any such right if such action, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the value of the Pledged Collateral or any part thereof except in connection with any transaction expressly permitted under the Arrangement Agreement; and

(B) the Collateral Trustee shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above.

(ii) Upon the occurrence and during the continuance of an Event of Default and notice to the Grantors from the Collateral Trustee that it is exercising its rights under this Section 3.4(b)(ii):

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights pertaining to the Pledged Collateral which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Trustee who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the Collateral Trustee to exercise the voting and other consensual rights pertaining to the Pledged Collateral which it may be entitled to exercise pursuant hereto and to receive all dividends, distributions and payments which it may be entitled to receive hereunder in respect of the Pledged Collateral: (x) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Trustee all proxies, dividend payment orders and other instruments as the Collateral Trustee may from time to time reasonably request and (y) each Grantor acknowledges that the Collateral Trustee may utilize the power of attorney set forth in Section 5.1.

3.5 Securities Accounts.

(a) Additional Representations for Securities Accounts. Each Grantor hereby represents and warrants that:

(i) the Collateral Schedules set forth under the heading "Securities Accounts" all of the Securities Accounts in which each Grantor has an interest (it being understood that (x) any Securities Account which is an Excluded Account shall be so indicated on the applicable Collateral Schedules with an

explanation of the applicable clause of definition of "Excluded Accounts" which applies to such Securities Account, and (y) such Grantor shall deliver to the Collateral Trustee such other information with respect to such Excluded Account as the Collateral Trustee shall reasonably request from time to time); and

(ii) each Grantor is the sole entitlement holder of each such Securities Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Trustee) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or securities or other property credited thereto.

(b) Delivery and Control of Securities Accounts.

(i) With respect to any Securities Accounts owned by any Grantor other than any Excluded Accounts, such Grantor shall, and shall use commercially reasonable efforts to cause the securities intermediary maintaining such Securities Account to, enter into a control agreement substantially in the form of the Securities Account Control Agreement attached as Exhibit B hereto or otherwise in form and substance reasonably satisfactory to the Collateral Trustee pursuant to which, among other things, it shall agree to comply with the Collateral Trustee's "entitlement orders" without further consent by such Grantor. Each Grantor shall have entered into such control agreement or agreements with respect to: (1) any Securities Accounts that exist on the Principal Instrument Delivery Date, as of or prior to the Principal Instrument Delivery Date and (2) any Securities Accounts that are created or acquired after the Principal Instrument Delivery Date, as of or prior to the deposit or transfer of any funds, whether constituting moneys or investments, into such Securities Accounts, other than, in each case, Excluded Accounts. If any Grantor acquires rights in any Securities Account after the Principal Instrument Delivery Date, it shall also deliver to the Collateral Trustee a completed Collateral Supplement reflecting such new Securities Account (it being understood that (x) any Securities Account which is an Excluded Account shall be so indicated on the applicable schedules to the Collateral Supplement with an explanation of the applicable clause of definition of "Excluded Accounts" which applies to such Securities Account, and (y) such Grantor shall deliver to the Collateral Trustee such other information with respect to such Excluded Account as the Collateral Trustee shall reasonably request from time to time).

(ii) Each Grantor hereby covenants and agrees that it shall not close or terminate any Securities Account (other than any Excluded Account) unless a successor or replacement account has been established with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, the Collateral Trustee and securities intermediary at which such successor or replacement account is to be maintained in accordance with the provisions of Section 3.5(b)(i).

(iii) In addition to the foregoing, if any depository institution with respect to any Securities Account is located in a jurisdiction outside of the United States, upon the reasonable request of the Collateral Trustee, each Grantor shall take such additional actions, including causing such depository institution to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Trustee; *provided*, that for any such jurisdiction where a Control Agreement is not customary, such Grantor shall not be required to comply with clause (i) or (ii) above.

(iv) Upon the occurrence and during the continuance of an Event of Default, the Collateral Trustee shall have the right, without notice to any Grantor, to transfer all or any portion of the Securities Accounts to its name or the name of its nominee or agent.

3.6 Deposit Accounts.

(a) Additional Representations for Deposit Accounts. Each Grantor hereby represents and warrants that:

(i) the Collateral Schedules set forth under the heading "Deposit Accounts" all of the Deposit Accounts in which each Grantor has an interest (it being understood that (x) any Deposit Account which is an Excluded Account shall be so indicated on the applicable Collateral Schedules with an explanation of the applicable clause of definition of "Excluded Accounts" which applies to such Deposit Account, and (y) such Grantor shall deliver to the Collateral Trustee such other information with respect to such Excluded Account as the Collateral Trustee shall reasonably request from time to time); and

(ii) each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Trustee) having "control" (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein.

(b) Delivery and Control of Deposit Accounts.

(i) With respect to any Deposit Account owned by any Grantor other than Excluded Accounts, such Grantor shall, and shall use commercially reasonable efforts to cause the depositary institution maintaining such account to, enter into a control agreement substantially in the form of the Deposit Account Control Agreement attached as Exhibit C hereto or otherwise in form and substance reasonably satisfactory to the Collateral Trustee, pursuant to which, among other things, the Collateral Trustee shall have "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to:

(1) any Deposit Accounts that exist on the Principal Instrument Delivery Date, as of or prior to the Principal Instrument Delivery Date and (2) any Deposit Accounts that are created or acquired after the Principal Instrument Delivery Date, as of or prior to the deposit or transfer of any such funds into such Deposit Accounts, other than, in each case, Excluded Accounts. If any Grantor acquires rights in any Deposit Account after the Principal Instrument Delivery Date, it shall also deliver to the Collateral Trustee a completed Collateral Supplement reflecting such new Deposit Account (it being understood that (x) any Deposit Account which is an Excluded Account shall be so indicated on the applicable schedules to the Collateral Supplement with an explanation of the applicable clause of definition of "Excluded Accounts" which applies to such Deposit Account, and (y) such Grantor shall deliver to the Collateral Trustee such other information with respect to such Excluded Account as the Collateral Trustee shall reasonably request from time to time).

(ii) Each Grantor hereby covenants and agrees that it shall not close or terminate any Deposit Account (other than any Excluded Account) unless a successor or replacement account has been established with the consent of the Collateral Trustee with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, the Collateral Trustee and depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 3.6(b)(i).

(iii) In addition to the foregoing, if any depository institution with respect to any Deposit Account is located in a jurisdiction outside of the United States, upon the reasonable request of the Collateral Trustee, each Grantor shall take such additional actions, including causing such depository institution to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Trustee; *provided*, that for any such jurisdiction where a Control Agreement is not customary, such Grantor shall not be required to comply with clause (i) or (ii) above.

(iv) Upon the occurrence and during the continuance of an Event of Default, the Collateral Trustee shall have the right, without notice to any Grantor, to transfer all or any portion of the Deposit Accounts to its name or the name of its nominee or agent.

3.7 Intellectual Property.

(a) Additional Representations for Intellectual Property. Each Grantor hereby represents and warrants that all of the representations and warranties in the Arrangement Agreement regarding its Intellectual Property are true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects).

(b) Additional Covenants for Intellectual Property. Notwithstanding anything contained herein to the contrary, each Grantor hereby covenants and agrees to comply with each of the affirmative and negative covenants set forth in the Arrangement Agreement with respect to Intellectual Property now or hereafter owned or licensed by such Grantor and its Subsidiaries. Such Grantor further covenants and agrees that, no less frequently than once per fiscal quarter to the extent that such Grantor has filed an application for registration or issuance of Intellectual Property in such fiscal quarter, it shall ensure the recordation of appropriate evidence (including intellectual property security agreements substantially in the forms of the Patent Security Agreement, Trademark Security Agreement and Copyright Security Agreement attached as Exhibits D, E and F, respectively, to this Agreement) of the liens and security interest granted hereunder in such Intellectual Property with any intellectual property registry in the United States (other than any domain name register) in which said Intellectual Property is registered or issued or in which an application for registration or issuance is pending including the United States Patent and Trademark Office, the United States Copyright Office and the various Secretaries of State. In any event, such Grantor shall, promptly upon the reasonable request of the Collateral Trustee, execute and deliver to the Collateral Trustee any document so requested by the Collateral Trustee to acknowledge, confirm, register, record, or perfect the Collateral Trustee's interest in any part of such Intellectual Property, including with respect to any domain name registers and the foreign counterparts of any of the registries referred to in the preceding sentence.

3.8 Further Assurances. Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that the Collateral Trustee may reasonably request in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Collateral Trustee to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall promptly:

(a) file (or authorize the filing of) such financing or continuation statements, or amendments thereto as may be necessary, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices as the Collateral Trustee may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(b) furnish to the Collateral Trustee from time to time statements and schedules (including updated Collateral Schedules) further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Trustee may reasonably request, all in reasonable detail (it being understood and agreed that the security interest of the Collateral Trustee shall attach to all property immediately upon any Grantor's acquisition of rights therein to the fullest extent permitted by applicable Requirements of Law and shall not be affected by the failure of any Grantor to deliver a Collateral Supplement or any other identification or description of such property);

(c) at any reasonable time at reasonable intervals, upon request by the Collateral Trustee, assemble the Collateral and allow inspection of the Collateral by the Collateral Trustee, or persons designated by the Collateral Trustee;

(d) at the Collateral Trustee's reasonable request, appear in and defend any action or proceeding that may affect in any material respect such Grantor's title to or the Collateral Trustee's security interest in all or any part of the Collateral;

(e) with respect to any letter of credit with a face value in excess of $250,000 hereafter arising to which such Grantor has rights, (i) use commercially reasonable efforts to obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Trustee, (ii) deliver to the Collateral Trustee a completed Collateral Supplement reflecting such new letter of credit and (iii) if reasonably requested by the Collateral Trustee, obtain for the Collateral Trustee the right of a beneficiary to demand payment or performance under such letter of credit;

(f) with respect to any Commercial Tort Claim in excess of $250,000 individually hereafter arising, deliver to the Collateral Trustee a completed Collateral Supplement identifying such new Commercial Tort Claim;

(g) with respect to any key personnel life insurance policies hereafter obtained by any Grantor, (i) provide written notice thereof to the Collateral Trustee by delivery of a Collateral Supplement describing such policies and (ii) upon Collateral Trustee's request, furnish the Collateral Trustee with agreements collaterally assigning such policies to the Collateral Trustee;

(h) with respect to any other policies of Insurance now owned or hereafter obtained by any Grantor, if reasonably requested by the Collateral Trustee, furnish the Collateral Trustee with agreements collaterally assigning such policies to the Collateral Trustee;

(i) with respect to any Project Documents entered into by any Grantor, furnish the Collateral Trustee, upon Collateral Trustee's reasonable request, with (i) agreements collaterally assigning such Grantor's rights under such Project Documents to the Collateral Trustee and (ii) consents and/or recognition agreements from the counterparties to such Project Documents requested by the Collateral Trustee; and

(j) with respect to any Governmental Approvals for the Projects obtained by any Grantor, furnish the Collateral Trustee, upon Collateral Trustee's reasonable request, with (i) agreements collaterally assigning such Grantor's rights under such Governmental Approvals to the Collateral Trustee and (ii) consents and/or recognition agreements from the applicable Governmental Authorities, as appropriate, with respect to the collateral assignments such Governmental Approvals and the transfer thereof following an Event of Default.

ARTICLE IV
REMEDIES

4.1 Code and Other Remedies Generally.

(a) If any Event of Default shall have occurred and be continuing, the Collateral Trustee may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default or otherwise under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Trustee, assemble all or part of the Collateral as directed by the Collateral Trustee and make it available to the Collateral Trustee at a place to be reasonably designated by the Collateral Trustee;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Trustee deems advisable; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Trustee's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Trustee may deem advisable.

(b) The Collateral Trustee or any other Secured Party may be the purchaser of any or all of the Collateral at any public sale or any private sale (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) in accordance with the UCC and the Collateral Trustee, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Trustee at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of

redemption, stay and/or appraisal which it now has or may at any time in the future have under applicable law now existing or hereafter enacted.

(c) Each Grantor agrees that, to the extent notice of sale shall be required by applicable law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(d) Each Grantor agrees that it would not be commercially unreasonable for the Collateral Trustee to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets.

(e) The Collateral Trustee may sell the Collateral without giving any warranties as to the Collateral. The Collateral Trustee may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(f) Each Grantor hereby waives any claims against the Collateral Trustee or any other Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at any private sale was less than the price which might have been obtained at a public sale, even if the Collateral Trustee accepts the first offer received and does not offer such Collateral to more than one offeree.

4.2 Sales on Credit. If the Collateral Trustee sells any of the Collateral upon credit, the Grantor will be credited only with payments actually made by the purchaser and received by the Collateral Trustee and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Trustee may resell the Collateral and Grantor shall be credited with proceeds of the sale.

4.3 Private Sale of Investment Property. Each Grantor recognizes that, by reason of certain prohibitions contained in the Exchange Act and applicable state securities laws, the Collateral Trustee may be compelled, with respect to any sale of all or any part of the Investment Property conducted without prior registration or qualification of such Investment Property under the Exchange Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Exchange Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Trustee shall have no obligation to engage in public

sales and no obligation to delay the sale of any Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Exchange Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Trustee determines to exercise its right to sell any or all of the Investment Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Trustee all such information as the Collateral Trustee may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Property which may be sold by the Collateral Trustee in exempt transactions under the Exchange Act and the rules and regulations of the SEC thereunder, as the same are from time to time in effect.

4.4 Additional Remedies Relating to Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuance of an Event of Default:

(i) the Collateral Trustee shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Trustee or otherwise, in the Collateral Trustee's sole discretion, to enforce any Intellectual Property owned by any Grantor, in which event such Grantor shall, at the request of the Collateral Trustee, do any and all lawful acts and execute any and all documents reasonably required by the Collateral Trustee in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Trustee as provided in Section 6.8 in connection with the exercise of its rights under this Section;

(ii) upon written demand from the Collateral Trustee in connection with the exercise of remedies hereunder, each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Trustee or such Collateral Trustee's designee all of such Grantor's right, title and interest in and to the Intellectual Property owned by such Grantor and shall execute and deliver to the Collateral Trustee such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that an assignment and/or recording as contemplated by subsection (ii) above shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Trustee (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, such Intellectual Property;

(iv) each Grantor shall ensure the availability and delivery to the Collateral Trustee (or any other Person entitled thereto as a result of the exercise by the Collateral Trustee of its rights and remedies hereunder) of any and all Intellectual Property owned or used by such Grantor or otherwise in such Grantor's possession, including confidential information, technical data and Trade

Secrets (regardless of the form or method of recording of such information and data), including computer databases, computer software documentation, owners' manuals, users manuals, installation instructions, operating instructions, other similar items, regardless of storage item, that explain the capability of the computer software or provide instruction for use of such computer software;

(v) within five (5) Business Days after written notice from the Collateral Trustee, each Grantor shall make available to the Collateral Trustee (or any other Person entitled thereto as a result of the exercise by the Collateral Trustee of its rights and remedies hereunder), to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of such Event of Default as the Collateral Trustee (or such other Person) may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with such Grantor's Intellectual Property, such persons to be available to perform their prior functions on the Collateral Trustee's (or such other Person's) behalf and to be compensated by the Collateral Trustee (or such other Person) at such Grantor's expense on a per diem, pro rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default; and

(vi) the Collateral Trustee shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of Intellectual Property used in the business of any Grantor, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Trustee, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done; and

(vii) such Grantor shall not, without Collateral Trustee's prior written consent, (x) adjust, settle or compromise the amount or payment of any such amount (y) release wholly or partly any obligor with respect thereto or (z) allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Trustee of any rights, title and interests in and to the Intellectual Property owned by any Grantor shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Trustee shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Trustee as aforesaid, subject to any disposition thereof that may have been made by the

Collateral Trustee; *provided*, after giving effect to such reassignment, the Collateral Trustee's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Trustee granted hereunder, shall continue to be in full force and effect; and *provided further*, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of any Secured Parties.

(c) Solely for the purpose of enabling the Collateral Trustee to exercise rights and remedies under this Article IV and at such time as the Collateral Trustee shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Trustee, to the extent it has the right to do so, an irrevocable, nonexclusive worldwide license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks owned by any Grantor, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

4.5 Collection of Receivables. Notwithstanding Section 3.3(b)(iv), the Collateral Trustee shall have the right, at any time following the occurrence and during the continuation of an Event of Default, to do any one or more of the following: (A) notify, or require any Grantor to notify, any Account Debtor of the Collateral Trustee's security interest in the Receivables and any Supporting Obligation; (B) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Trustee; (C) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Trustee; and (D) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Trustee notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be promptly (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Trustee if required, in a collateral account maintained under the sole dominion and control of the Collateral Trustee, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Trustee hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon without Collateral Trustee's prior written consent.

4.6 Turn Over and Application of Proceeds. In addition to the rights of the Collateral Trustee specified in Section 4.5 with respect to payments of Receivables, upon the request of the Collateral Trustee following the occurrence and during the continuance of an Event of Default and in any event following acceleration of the Secured Obligations pursuant to

Section 10.2 of the Arrangement Agreement, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Collateral Trustee, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, unless provided expressly otherwise herein, be turned over to the Collateral Trustee in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Trustee, if required) and held by the Collateral Trustee in a collateral account maintained under the sole dominion and control of the Collateral Trustee. Any proceeds of Collateral received by the Collateral Trustee (whether from a Grantor or otherwise) while an Event of Default shall have occurred and be continuing may, in the sole discretion of the Collateral Trustee, (A) be held by the Collateral Trustee for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by the Collateral Trustee against the Secured Obligations then due and owing. Without limiting the generality of the foregoing, if any Event of Default shall have occurred and be continuing, the Collateral Trustee may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Collateral Trustee to be applied against the Secured Obligations then due and owing.

4.7 Deficiency. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees and disbursements of any attorneys employed by the Collateral Trustee to collect such deficiency.

4.8 Marshaling. Neither the Collateral Trustee nor any Secured Party shall be under any obligation to marshal any of the Collateral in favor of any Grantor or any other Person or against or in payment of any or all of the Secured Obligations.

ARTICLE V
COLLATERAL TRUSTEE

5.1 Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Trustee (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Trustee or otherwise, from time to time in the Collateral Trustee's discretion to take the following actions that the Collateral Trustee may deem necessary or advisable to accomplish the purposes of this Agreement, at such Grantor's expense:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor pursuant to the Arrangement Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Trustee may deem necessary or advisable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Trustee with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement that Grantors have not taken within the time allowed, including to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Trustee in its sole discretion, any such payments made by the Collateral Trustee to become obligations of such Grantor to the Collateral Trustee, due and payable immediately without demand;

(h) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Trustee were the absolute owner thereof for all purposes; and

(i) upon the occurrence and during the continuance of any Event of Default, to do, at the Collateral Trustee's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Trustee deems necessary or advisable to protect, preserve or realize upon the Collateral and the Collateral Trustee's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

5.2 Authorization to File Financing Statements. Each Grantor hereby authorizes the Collateral Trustee to file a Record or Records, including financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Trustee may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Trustee herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Trustee may determine, in its sole discretion, is necessary or advisable to ensure the perfection of the security interest in the Collateral granted to the Collateral Trustee herein, including

describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired".

5.3 Access; Right of Inspection. The Collateral Trustee and its representatives shall at all reasonable times and on reasonable intervals have full and free access during normal business hours to all the books, correspondence and records of each Grantor, and the Collateral Trustee and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and each Grantor agrees to render to the Collateral Trustee and its representatives, at such Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto. The Collateral Trustee and its representatives shall at all times also have the right to enter any premises of each Grantor and inspect any property of each Grantor where any of the Collateral of such Grantor granted pursuant to this Agreement is located for the purpose of inspecting the same, observing its use or otherwise protecting its interests therein.

5.4 Duty of Collateral Trustee. The Collateral Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Trustee deals with similar property for its own account. Neither the Collateral Trustee, any Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Trustee and the other Secured Parties hereunder are solely to protect their interests in the Collateral and shall not impose any duty upon the Collateral Trustee or any other Secured Party to exercise any such powers. The Collateral Trustee and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

5.5 Collateral Trustee May Perform. If any Grantor fails to perform any agreement contained herein within the time allowed, the Collateral Trustee may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Trustee incurred in connection therewith shall be payable by each Grantor under Section 6.8.

5.6 Authority of Collateral Trustee. Each Grantor acknowledges that the rights and responsibilities of the Collateral Trustee under this Agreement with respect to any action taken by the Collateral Trustee or the exercise or non-exercise by the Collateral Trustee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Trustee and the other Secured Parties, be governed by the Collateral Trust Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Trustee and the Grantors, the Collateral Trustee shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no

Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

5.7 Successor Collateral Trustee. The Collateral Trustee may resign or be removed, and a successor appointed, pursuant to the Collateral Trust Agreement. Upon the acceptance of any appointment as Collateral Trustee by a successor Collateral Trustee, that successor Collateral Trustee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Trustee under this Agreement, and the retiring or removed Collateral Trustee under this Agreement shall promptly (i) transfer to such successor Collateral Trustee all sums, Securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Trustee under this Agreement, and (ii) execute and deliver to such successor Collateral Trustee or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Trustee of the security interests created hereunder, whereupon such retiring or removed Collateral Trustee shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Collateral Trustee's resignation or removal hereunder as the Collateral Trustee, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Trustee hereunder.

ARTICLE VI
MISCELLANEOUS

6.1 Amendments, etc. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 6.1 of the Collateral Trust Agreement.

6.2 Delay and Waiver. No delay or omission in exercising any right, power, privilege or remedy under this Agreement or any other Loan Document, including any rights and remedies in connection with the occurrence of a Default or Event of Default shall impair any such right, power, privilege or remedy of the Collateral Trustee or the other Secured Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. All rights, powers, privileges and remedies, either under this Agreement or any other Loan Document or by law or otherwise afforded to any of the Collateral Trustee or the other Secured Parties, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that any of the Collateral Trustee or the other Secured Parties may otherwise have.

6.3 Right of Set-Off. In addition to any rights now or hereafter granted under any Requirements of Law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Secured Party is hereby

authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Grantor or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other Indebtedness at any time held or owing by such Secured Party (including by any branches and agencies of such Secured Party wherever located) to or for the credit or the account of any Grantor against and on account of the Secured Obligations and liabilities of any Grantor to such Secured Party under this Agreement or any other Loan Documents.

6.4 Survival of Representations and Warranties. All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Agreement and the making of the Advances under the Funding Agreements.

6.5 Notices. All notices, requests and demands to or upon the Collateral Trustee or any Grantor hereunder shall be effected in the manner provided for in Section 6.3 of the Collateral Trust Agreement or at such other number or address as shall be designated by such party in a written notice to each other party hereto; *provided* that any such notice, request or demand to or upon any Additional Grantor shall be addressed to such Grantor at its notice address set forth on its Subsidiary Joinder Agreement or at such other number or address as shall be designated by such Additional Grantor in a written notice to each other party hereto.

6.6 Severability.

(a) The holding by any court of competent jurisdiction that any remedy pursued by the Collateral Trustee or any other Secured Party hereunder is unavailable or unenforceable shall not affect in any way the ability of the Collateral Trustee or any other Secured Party to pursue any other remedy available to it. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such provision shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement and shall not invalidate or render unenforceable any other provision hereof.

(b) In the event that DOE's consent is required under any of the Loan Documents, the determination whether to grant or withhold such consent shall be made by DOE in its sole discretion without any implied duty towards any other Person, except as otherwise expressly provided therein.

6.7 Judgment Currency. Each Grantor agrees, to the fullest extent permitted under applicable law, to indemnify each Secured Party against any loss incurred by such Secured Party as a result of any judgment or order being given or made for any amount due such Secured Party under the Loan Documents and such judgment or order being expressed and to be paid in a Judgment Currency other than the Currency of Denomination and as a result of any variation between (i) the rate of exchange at which amounts in the Currency of Denomination are converted into Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange at which such Secured Party would have been able to purchase the Currency of

Denomination with the amount of the Judgment Currency actually received by such Secured Party had it utilized the amount of Judgment Currency so received to purchase the Currency of Denomination as promptly as practicable upon receipt thereof. The foregoing indemnity shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant Currency of Denomination that are documented and reasonable in light of market conditions at the time of such conversion.

6.8 Indemnification.

(a) Each Grantor, jointly and severally, agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting the Secured Obligations against the Grantors or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents, including the reasonable fees and other charges of counsel to each Secured Party.

(b) Each Grantor, jointly and severally, agrees to pay, indemnify and hold each Secured Party harmless from and against any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay from the Grantors in paying, all stamp, excise, sales and other taxes that may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement and the other Loan Documents.

(c) Each Grantor, jointly and severally, agrees to pay, indemnify and hold the Secured Parties and each other Indemnified Person harmless from and against any and all Indemnified Liabilities to the fullest extent as the Borrower would be required to do so pursuant to Section 12.8 of the Arrangement Agreement.

(d) The provisions of this Section 6.8 shall survive foreclosure under this Agreement and satisfaction or discharge of the Secured Obligations and termination of this Agreement, and shall be in addition to any other rights and remedies of any Indemnified Person.

6.9 Limitation on Liability. No claim shall be made by any Grantor or any of its Affiliates against any Secured Party or any of their Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Loan Documents or any act or omission or event occurring in connection therewith; and each Grantor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

6.10 Successors and Assigns. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until all Secured Obligations have been paid in full (other than unasserted contingent indemnity obligations, which shall nonetheless survive termination of this Agreement in accordance with Section 6.8) and all Loan Commitment Amounts have been reduced to zero, be binding upon each Grantor,

its successors and assigns, and inure, together with the rights and remedies of the Collateral Trustee hereunder, to the benefit of the Collateral Trustee and its successors and assigns.

6.11 Further Assurances and Corrective Instruments. To the extent permitted by Requirements of Law, each Grantor shall, upon the written request of the Collateral Trustee, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, within a reasonable period of such request, such amendments or supplements hereto, and such further instruments, and take such further actions, as may be necessary in the Collateral Trustee's reasonable judgment to effectuate the intention, performance and provisions hereof.

6.12 Reinstatement. Where any discharge is made in whole or in part, or any arrangement is made on the faith of, any payment, security or other disposition which is avoided or must be repaid, whether upon the insolvency, bankruptcy, liquidation or other similar proceeding or otherwise pursuant to any applicable Requirements of Law, the liability of the Grantors under this Agreement shall continue as if there had been no such discharge or arrangement. The Secured Parties shall be entitled to concede or compromise any claim that any such payment, security or other disposition is liable to avoidance or repayment.

6.13 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE RULES OF CONFLICTS OF LAWS EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN NEW YORK.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

6.14 Submission to Jurisdiction, Etc.

(a) Any legal action or proceeding against any Grantor with respect to or arising out of this Agreement may, to the fullest extent permitted by applicable law, be brought in or removed to the U.S. District Court for the District of Columbia or any other federal court of competent jurisdiction in any other jurisdiction where the Grantor or any of its property may be found. By execution and delivery of this Agreement, each Grantor accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Agreement. Each Grantor hereby waives, to the fullest extent permitted by applicable law, any right to stay or dismiss any action or proceeding under

or in connection with this Agreement brought before the foregoing courts on the basis of forum non-conveniens or improper venue. Each Grantor agrees that a judgment obtained in any such action may be enforced in any other federal court of competent jurisdiction, by suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment and of the fact and of the amount of its obligation.

(b) Each Grantor hereby agrees that process may be served on it by certified mail, return receipt requested, to its address as specified in Section 6.5 and that such mailing is sufficient to confer personal jurisdiction over such Grantor in any proceeding in any court referred to in Section 6.14(a) and otherwise constitutes effective and binding service in every respect. Nothing in this Section 6.14(b) shall affect the right of the Secured Parties to serve process in any other manner permitted by law.

6.15 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding, and supersede all prior agreements and understandings (both written and oral), between the parties hereto with respect to the subject matter hereof and thereof.

6.16 Benefits of Agreement. Nothing in this Agreement or any other Loan Document, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Agreement.

6.17 Headings. Paragraph headings have been inserted in the Loan Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Loan Documents and shall not be used in the interpretation of any provision of the Loan Documents.

6.18 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

6.19 No Partnership; Etc. The Secured Parties and the Grantors intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Secured Parties and the Grantors or any other Person. The Secured Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Grantors or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and expenses in connection with or arising from the ownership, operation or occupancy of any Project or any other Collateral and to perform all obligations under the agreements and contracts relating to any Project or any other Collateral shall be the sole responsibility of the Grantors.

6.20 Releases.

(a) At the time and to the extent provided in Section 6.15(a) of the Collateral Trust Agreement, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Trustee and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors.

(b) At the times and to the extent provided in Section 6.15(b), (c), (d) and (e) of the Collateral Trust Agreement, the Collateral so specified shall be released from the Liens created hereby on such Collateral, in accordance with the provisions of the Collateral Trust Agreement.

6.21 Independence of Covenants. All covenants under this Agreement and the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

6.22 Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 7.6 of the Arrangement Agreement, or that the Borrower desires to become a party to this Agreement, shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Subsidiary Joinder Agreement.

[Remainder of page intentionally left blank]
[Signature pages follow]

IN WITNESS WHEREOF, each Grantor and the Collateral Trustee have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

TESLA MOTORS, INC.,
a Delaware corporation, as Grantor

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC,
a New York limited liability company, as Grantor
By: Tesla Motors, Inc., its sole member

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

[FORM OF] UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement, dated as of [_____], 20[__] among [_____], a [_____] (the "Pledgor"), [_____], a [_____] (the "Issuer"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Pledgor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
OWNERSHIP AND INSTRUCTIONS

1.1 Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of [_____] [shares] of the Issuer's [common stock] (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Trustee and, prior to the Issuer's receipt of a Notice of Sole Control (as defined below), the Pledgor.

1.2 Instructions. If, after receiving a Notice of Sole Control, the Issuer shall receive any instructions originated by the Collateral Trustee relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person. The Issuer hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Pledged Shares and hereby acknowledges and consents to such lien. If the Pledgor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by the Collateral Trustee, the Issuer shall follow the instructions issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Issuer in substantially the form set forth in Exhibit A hereto.

1.3 Voting Rights. Until such time as the Collateral Trustee shall have delivered a Notice of Sole Control to the Issuer, the Pledgor shall have the right to vote the Pledged Shares.

ARTICLE II
ADDITIONAL REPRESENTATIONS AND COVENANTS OF THE ISSUER

The Issuer hereby represents and warrants to and covenants with the Collateral Trustee as follows:

2.1 It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating to the Pledged Shares

pursuant to which it has agreed to comply with instructions issued by such other person; and

2.2 It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Trustee purporting to limit or condition the obligation of the Issuer to comply with instructions as set forth in Section 1.2 hereof.

2.3 Except for the claims and interest of the Collateral Trustee and of the Pledgor in the Pledged Shares, the Issuer does not know of any liens, claims or encumbrances relating to the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Trustee and the Pledgor thereof.

2.4 This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principals (whether enforcement is sought by proceedings in equity or at law).

ARTICLE III
MISCELLANEOUS

3.1 Indemnification of Issuer.

(a) The Pledgor and the Collateral Trustee hereby agree that the Issuer is released from any and all liabilities to the Pledgor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder.

(b) The Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

3.2 Termination. The obligations of the Issuer to the Collateral Trustee pursuant to this Uncertificated Securities Control Agreement shall continue in effect until the security interests of the Collateral Trustee in the Pledged Shares have been terminated and the Collateral Trustee has notified the Issuer of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially

the form of Exhibit B hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Trustee's security interest in the Pledged Shares. The termination of this Uncertificated Securities Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

3.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Pledgor:	[INSERT ADDRESS] Attention: Telephone: Facsimile:
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Telephone: (913) 253-9000 Facsimile: (913) 253-9709
with a copy to (which shall not constitute notice):	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: General Counsel Telephone: (913) 253-9000 Facsimile: (913) 253-9709
Issuer:	[INSERT ADDRESS] Attention: Telephone: Facsimile:

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

3.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

3.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

3.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Uncertificated Securities Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

[PLEDGOR]

By: _____
Name:
Title:

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

[NAME OF ISSUER],
as Issuer

By: _____
Name:
Title:

EXHIBIT A
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

[Name and Address of Issuer]

Attention:

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Uncertificated Securities Control Agreement, dated as of [_____], 20[__] among [**PLEDGOR**], you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over [_____] shares of the Issuer's [common] stock (the "Pledged Shares"). You are hereby instructed not to accept any direction or instructions with respect to the Pledged Shares from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to [**PLEDGOR**].

Very truly yours,

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

cc: **[PLEDGOR]**

[FORM OF] SECURITIES ACCOUNT CONTROL AGREEMENT

This Securities Account Control Agreement, dated as of [_____], 20[__] (this "Agreement") among [_____] (the "Debtor"), [_____], in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Securities Intermediary"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Debtor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
THE SECURITIES ACCOUNT

1.1 Establishment of the Securities Account. The Securities Intermediary hereby confirms and agrees that:

(a) the Securities Intermediary has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Securities Account");

(b) the Securities Intermediary shall not change the name or account number of the Securities Account without the prior written consent of the Collateral Trustee and, prior to the Debtor's receipt of a Notice of Sole Control (as defined below), the Debtor;

(c) all securities or other property underlying any financial assets credited to the Securities Account shall be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another securities account maintained in the name of the Securities Intermediary and in no case will any financial asset credited to the Securities Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Securities Intermediary or in blank;

(d) All property delivered to the Securities Intermediary by the Debtor will be promptly credited to the Securities Account; and

(e) The Securities Account is a "securities account" within the meaning of Section 8-501 of the UCC.

1.2 "Financial Assets" Election. The Securities Intermediary hereby agrees that each item of property (including, without limitation, any investment property, financial asset, security, instrument, general intangible or cash) credited to the Securities

Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

1.3 Control of the Securities Account. If, after receiving a Notice of Sole Control, the Securities Intermediary shall receive any entitlement order from the Collateral Trustee directing transfer or redemption of any financial asset relating to the Securities Account, the Securities Intermediary shall comply with such entitlement order without further consent by the Debtor or any other person. The Securities Intermediary hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Securities Account and hereby acknowledges and consents to such lien. If the Debtor is otherwise entitled to issue entitlement orders and such orders conflict with any entitlement order issued by the Collateral Trustee, the Securities Intermediary shall follow the orders issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Debtor in substantially the form set forth in Exhibit A hereto.

ARTICLE II
SUBORDINATION AND WAIVER

2.1 Subordination of Lien; Waiver of Set-Off. In the event that the Securities Intermediary has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Securities Account or any financial assets credited thereto, the Securities Intermediary hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Trustee. The financial assets credited to the Securities Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Trustee (except that the Securities Intermediary may set off (i) all amounts due to the Securities Intermediary in respect of customary fees and expenses for the routine maintenance and operation of the Securities Account and (ii) the face amount of any checks which have been credited to such Securities Account but are subsequently returned unpaid because of uncollected or insufficient funds).

ARTICLE III
CONFLICTS AND ADVERSE CLAIMS

3.1 Conflict with Other Agreements.

(a) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail.

(b) The Securities Intermediary hereby confirms and agrees that:

(i) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Securities Account and/or any financial assets credited

thereto pursuant to which it has agreed to comply with entitlement orders of such other person; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Trustee purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as set forth in this Agreement.

3.2 Adverse Claims. Except for the claims and interest of the Collateral Trustee and of the Debtor in the Securities Account, the Securities Intermediary does not know of any liens, claims encumbrances relating to the Securities Account or any financial asset credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Securities Account or any financial asset credited thereto, the Securities Intermediary will promptly notify the Collateral Trustee and the Debtor thereof.

ARTICLE IV
MAINTENANCE OF SECURITIES ACCOUNT

In addition to, and not in lieu of, the obligation of the Securities Intermediary to honor entitlement orders as agreed in Section 1.3 hereof, the Securities Intermediary agrees to maintain the Securities Account as follows:

4.1 Notice of Sole Control. If at any time the Collateral Trustee delivers to the Securities Intermediary a Notice of Sole Control, the Securities Intermediary agrees that after receipt of such notice, it will take all instruction with respect to the Securities Account solely from the Collateral Trustee.

4.2 Voting Rights. Until such time as the Securities Intermediary receives a Notice of Sole Control, the Debtor shall direct the Securities Intermediary with respect to the voting of any financial assets credited to the Securities Account.

4.3 Permitted Investments. Until such time as the Securities Intermediary receives a Notice of Sole Control, the Debtor shall direct the Securities Intermediary with respect to the selection of investments to be made for the Securities Account; provided, however, that the Securities Intermediary shall not honor any instruction to purchase any investments other than investments of a type described on Exhibit B hereto.

4.4 Statements and Confirmations. The Securities Intermediary will promptly send copies of all statements, confirmations and other correspondence concerning the Securities Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Collateral Trustee at the address for each set forth in Section 5.3 of this Agreement.

4.5 Tax Reporting. All items of income, gain, expense and loss recognized in the Securities Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

4.6 Withdrawal Requests. If the Debtor requests withdrawal of, or transfer of, funds or property from the Securities Account, the Securities Intermediary shall honor such request provided that the Securities Intermediary has not received a Notice of Sole Control (pursuant to which the Securities Intermediary will honor instructions and orders of only the Collateral Trustee).

ARTICLE V
MISCELLANEOUS

5.1 Indemnification of Securities Intermediary.

(a) The Debtor and the Collateral Trustee hereby agree that the Securities Intermediary is released from any and all liabilities to the Debtor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Securities Intermediary with the terms hereof, except to the extent that such liabilities arise from the Securities Intermediary's gross negligence, willful misconduct or breach of its obligations hereunder.

(b) The Debtor, its successors and assigns shall at all times indemnify and save harmless the Securities Intermediary from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Securities Intermediary with the terms hereof, except to the extent that such arises from the Securities Intermediary's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

5.2 Termination. The obligations of the Securities Intermediary to the Collateral Trustee pursuant to this Agreement shall continue in effect until the security interest of the Collateral Trustee in the Securities Account has been terminated and the Collateral Trustee has notified the Securities Intermediary of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Securities Intermediary upon the request of the Debtor on or after the termination of the Collateral Trustee's security interest in the Securities Account. The termination of this Agreement shall not terminate the Securities Account or alter the obligations of the Securities Intermediary to the Debtor pursuant to any other agreement with respect to the Securities Account.

5.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or

electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Debtor:	[INSERT ADDRESS] Attention: Telephone: Facsimile:
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Telephone: (913) 253-9000 Facsimile: (913) 253-9709
with a copy to (which shall not constitute notice):	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: General Counsel Telephone: (913) 253-9000 Facsimile: (913) 253-9709
Securities Intermediary:	[INSERT ADDRESS] Attention: Telephone: Facsimile:

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto

5.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto

5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

5.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Securities Account Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

[DEBTOR]

By: _____
Name:
Title:

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

[NAME OF SECURITIES INTERMEDIARY],
as Securities Intermediary

By: _____
Name:
Title:

EXHIBIT A
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Securities Account Control Agreement, dated as of [_____], 20[__] among **[DEBTOR]**, you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over securities account number [_____] (the "Securities Account") and all financial assets credited thereto. You are hereby instructed not to accept any direction, instructions or entitlement orders with respect to the Securities Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to **[DEBTOR]**.

Very truly yours,

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

cc: **[DEBTOR]**

EXHIBIT B
TO SECURITIES ACCOUNT CONTROL AGREEMENT

Permitted Investments

EXHIBIT C
TO SECURITIES ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

[Name and Address of Securities Intermediary]

Attention:

Re: Termination of Securities Account Control Agreement

You are hereby notified that the Securities Account Control Agreement, dated as of [_____], 20[__] among you, **[DEBTOR]** and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) [_____] from **[DEBTOR]**. This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to **[DEBTOR]** pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to **[DEBTOR]**.

Very truly yours,

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

cc: [DEBTOR]

[FORM OF] DEPOSIT ACCOUNT CONTROL AGREEMENT

This Deposit Account Control Agreement, dated as of [_____], 20[__] (this "Agreement") among [_____] (the "Debtor"), [_____], in its capacity as a "bank" as defined in Section 9-102 of the UCC (in such capacity, the "Financial Institution"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Debtor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
THE DEPOSIT ACCOUNT

1.1 Establishment of Deposit Account. The Financial Institution hereby confirms and agrees that:

(a) the Financial Institution has established account number [IDENTIFY ACCOUNT NUMBER] in the name "[IDENTIFY EXACT TITLE OF ACCOUNT]" (such account and any successor account, the "Deposit Account");

(b) the Financial Institution shall not change the name or account number of the Deposit Account without the prior written consent of the Collateral Trustee and, prior to the Debtor's receipt of a Notice of Sole Control (as defined below), the Debtor; and

(c) the Deposit Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the UCC.

1.2 Control of the Deposit Account. If, after receiving a Notice of Sole Control, the Financial Institution shall receive any instructions originated by the Collateral Trustee directing the disposition of funds in the Deposit Account, the Financial Institution shall comply with such instructions without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Deposit Account and hereby acknowledges and consents to such lien. If the Debtor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by the Collateral Trustee, the Financial Institution shall follow the instructions issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Debtor in substantially the form set forth in Exhibit A hereto.

ARTICLE II
SUBORDINATION AND WAIVER

2.1 Subordination of Lien; Waiver of Set-Off. In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Deposit Account or any funds credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Trustee. Funds credited to the Deposit Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Trustee (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Deposit Account and (ii) the face amount of any checks which have been credited to such Deposit Account but are subsequently returned unpaid because of uncollected or insufficient funds).

ARTICLE III
CONFLICTS AND ADVERSE CLAIMS

3.1 Conflict with Other Agreements.

(a) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail.

(b) The Financial Institution hereby confirms and agrees that:

(i) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Deposit Account and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by such persons; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Trustee purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as set forth in this Agreement.

3.2 Adverse Claims. Except for the claims and interest of the Collateral Trustee and of the Debtor in the Deposit Account, the Financial Institution does not know of any liens, claims or encumbrances relating to the Deposit Account or any funds credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Deposit Account or any funds credited thereto, the Financial Institution will promptly notify the Collateral Trustee and the Debtor thereof.

ARTICLE IV
MAINTENANCE OF DEPOSIT ACCOUNT

In addition to, and not in lieu of, the obligation of the Financial Institution to honor instructions as set forth in Section 1.2 hereof, the Financial Institution agrees to maintain the Deposit Account as follows:

4.1 Notice of Sole Control. If at any time the Collateral Trustee delivers to the Financial Institution a Notice of Sole Control, the Financial Institution agrees that after receipt of such notice, it will take all instruction with respect to the Deposit Account solely from the Collateral Trustee.

4.2 Statements and Confirmations. The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning the Deposit Account simultaneously to each of the Debtor and the Collateral Trustee at the address for each set forth in Section 5.3 of this Agreement.

4.3 Tax Reporting. All interest, if any, relating to the Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Debtor.

4.4 Withdrawal Requests. If the Debtor requests withdrawal of, or transfer of, funds from the Deposit Account, the Financial Institution shall honor such request provided that the Financial Institution has not received a Notice of Sole Control (pursuant to which the Financial Institution will honor instructions of only the Collateral Trustee).

ARTICLE V
MISCELLANEOUS

5.1 Indemnification of Financial Institution.

(a) The Debtor and the Collateral Trustee hereby agree that the Financial Institution is released from any and all liabilities to the Debtor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence, gross willful misconduct or breach of its obligations hereunder.

(b) The Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

5.2 Termination. The obligations of the Financial Institution to the Collateral Trustee pursuant to this Agreement shall continue in effect until the security interest of the Collateral Trustee in the Deposit Account has been terminated and the Collateral Trustee has notified the Financial Institution of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially the form of Exhibit B hereto to the Financial Institution upon the request of the Debtor on or after the termination of the Collateral Trustee's security interest in the Deposit Account. The termination of this Agreement shall not terminate the Deposit Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Deposit Account.

5.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Debtor:	[INSERT ADDRESS] Attention: Telephone: Facsimile:
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Telephone: (913) 253-9000 Facsimile: (913) 253-9709
with a copy to (which shall not constitute notice):	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: General Counsel Telephone: (913) 253-9000 Facsimile: (913) 253-9709

Financial Institution: [INSERT ADDRESS]
Attention:
Telephone:
Facsimile:

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

5.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

5.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Deposit Account Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

[DEBTOR]

By: _____
Name:
Title:

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

[NAME OF FINANCIAL INSTITUTION],
as Financial Institution

By: _____
Name:
Title:

EXHIBIT A
TO DEPOSIT ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

[Name and Address of Financial Institution]

Attention:

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Deposit Account Control Agreement, dated as of [_____], 20[__] among **[DEBTOR]**, you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over deposit account number [_____] (the "Deposit Account") and all funds credited thereto. You are hereby instructed not to accept any direction or instructions with respect to the Deposit Account or the funds credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to **[DEBTOR]**.

Very truly yours,

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

cc: **[DEBTOR]**

EXHIBIT B
TO DEPOSIT ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

[Name and Address of Financial Institution]

Attention:

Re: Termination of Deposit Account Control Agreement

You are hereby notified that the Deposit Account Control Agreement, dated as of [_____], 20[__] among **[DEBTOR]**, you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) [_____] from **[DEBTOR]**. This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to **[DEBTOR]** pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to **[DEBTOR]**.

Very truly yours,

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title:

cc: [DEBTOR]

EXHIBIT D
TO PLEDGE AND SECURITY AGREEMENT

[FORM OF] NOTICE OF GRANT OF SECURITY INTEREST IN PATENTS

NOTICE OF GRANT OF SECURITY INTEREST IN PATENTS (this "Notice"), dated as of [_____], 20[__], made by and among [_____] (the "Grantor") in favor of Midland Loan Services, Inc., as Collateral Trustee (the "Secured Party"; the Secured Party and the Grantor, collectively the "Parties").

WHEREAS, the Grantor is the owner of the issued patents and patent applications set forth on Schedule I attached hereto (collectively, the "Patents");

WHEREAS, pursuant to the terms and conditions of the Pledge and Security Agreement dated as of January 20, 2010, by and among the Parties and the other grantors party thereto (the "Security Agreement"), the Grantor granted to the Secured Party a security interest in, and lien on, certain intellectual property owned by the Grantor, including the Patents and all proceeds of the foregoing (collectively, the "Patent Collateral"); and

WHEREAS, pursuant to the Security Agreement, the Grantor agreed to execute and deliver to the Secured Party this Notice for purposes of filing the same with the United States Patent and Trademark Office (the "PTO") to confirm, evidence and record the security interest in the Patent Collateral granted pursuant to the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Security Agreement, the Grantor hereby grants to the Secured Party a security interest in, and lien on, the Patent Collateral.

The Grantor hereby authorizes the PTO to file and record this Notice together with the annexed Schedule I.

The Parties hereby acknowledge and agree that the security interest in the Patent Collateral may only be terminated in accordance with the terms of the Security Agreement or upon their mutual consent.

This Notice may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

THIS NOTICE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Remainder of Page Intentionally Left Blank]

EXHIBIT D-2

IN WITNESS WHEREOF, the undersigned has caused this Notice to be duly executed and delivered as of the date first above written.

[_____]

By:_____
Name:
Title:

EXHIBIT D-3

Schedule I

Patents and Patent Applications

[See attached]

EXHIBIT E
TO PLEDGE AND SECURITY AGREEMENT

NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS

NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS (this "Notice"), dated as of [_____], 20[__], made by and among [_____] (the "Grantor") in favor of Midland Loan Services, Inc., as Collateral Trustee (the "Secured Party"; the Secured Party and the Grantor, collectively the "Parties").

WHEREAS, the Grantor is the owner of the trademark and service mark registrations and the trademark and service mark applications set forth on Schedule I attached hereto (collectively, the "Trademarks");

WHEREAS, pursuant to the terms and conditions of the Pledge and Security Agreement dated as of January 20, 2010, by and among the Parties and the other grantors party thereto (the "Security Agreement"), the Grantor granted to the Secured Party a security interest in, and lien on, certain intellectual property owned by the Grantor, including the Trademarks and all proceeds of the foregoing (collectively, the "Trademark Collateral"); and

WHEREAS, pursuant to the Security Agreement, the Grantor agreed to execute and deliver to the Secured Party this Notice for purposes of filing the same with the United States Patent and Trademark Office (the "PTO") to confirm, evidence and record the security interest in the Trademark Collateral granted pursuant to the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Security Agreement, the Grantor hereby grants to the Secured Party a security interest in, and lien on, the Trademark Collateral, *provided* that the grant of security interest shall not include any Trademark that may be deemed invalidated, canceled, unenforceable or abandoned due to the grant and/or enforcement of such security interest unless and until such time that the grant and/or enforcement of the security interest will not affect the validity of such Trademark.

The Grantor hereby authorizes the PTO to file and record this Notice together with the annexed Schedule I.

The Parties hereby acknowledge and agree that the security interest in the Trademark Collateral may only be terminated in accordance with the terms of the Security Agreement or upon their mutual consent.

This Notice may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

THIS NOTICE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING

EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be duly executed and delivered as of the date first above written.

[_____]

By:_____
Name:
Title:

Schedule I

Trademark Registrations and Applications

[See attached]

NOTICE OF GRANT OF SECURITY INTEREST IN COPYRIGHTS

NOTICE OF GRANT OF SECURITY INTEREST IN COPYRIGHTS (this "Notice"), dated as of [_____], 20[__], made by and among [_____] (the "Grantor") in favor of Midland Loan Services, Inc., as Collateral Trustee (the "Secured Party"; the Secured Party and the Grantor, collectively the "Parties").

WHEREAS, the Grantor is the owner of the issued copyrights and copyright applications set forth on Schedule I attached hereto (collectively, the "Copyrights");

WHEREAS, pursuant to the terms and conditions of the Pledge and Security Agreement dated as of January 20, 2010, by and among the Parties and the other grantors party thereto (the "Security Agreement"), the Grantor granted to the Secured Party a security interest in, and lien on, certain intellectual property owned by the Grantor, including the Copyrights and all proceeds of the foregoing (collectively, the "Copyright Collateral"); and

WHEREAS, pursuant to the Security Agreement, the Grantor agreed to execute and deliver to the Secured Party this Notice for purposes of filing the same with the United States Copyright Office (the "Copyright Office") to confirm, evidence and perfect the security interest in the Copyright Collateral granted pursuant to the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Security Agreement, the Grantor hereby grants to the Secured Party a security interest in, and lien on, the Copyright Collateral.

The Grantor hereby authorizes the Copyright Office to file and record this Notice together with the annexed Schedule I.

The Parties hereby acknowledge and agree that the security interest in the Copyright Collateral may only be terminated in accordance with the terms of the Security Agreement or upon their mutual consent.

This Notice may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

THIS NOTICE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE

AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be duly executed and delivered as of the date first above written.

[_____]

By:_____
Name:
Title:

EXHIBIT F-3

Schedule I

Copyright Registrations and Applications
[See attached]

TESLA MOTORS, INC.
TESLA MOTORS NEW YORK LLC

COLLATERAL SCHEDULES

January 20, 2010

To: The United States Department of Energy (the "DOE") and Midland Loan Services, Inc. (the "Collateral Trustee") with respect to (i) that certain Loan Arrangement and Reimbursement Agreement, dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Arrangement Agreement"), by and between Tesla Motors, Inc., a Delaware corporation (the "Borrower"), and the DOE, and (ii) that certain Pledge and Security Agreement, dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Security Agreement"), by and among the Borrower, the other grantors from time to time party thereto, and Collateral Trustee.

The Collateral Schedules are being delivered to you pursuant to the Arrangement Agreement and the Security Agreement. The undersigned hereby certify that the items set forth in the attached Schedules represent the disclosures required with respect to the Collateral and organizational structure of the undersigned in connection with certain definitions and representations, warranties and covenants of the Borrower and other Obligors under the Arrangement Agreement and the Security Agreement. Capitalized terms used herein (or in the attached schedules) and defined in the Arrangement Agreement or the Security Agreement shall have the meanings ascribed in the Arrangement Agreement or the Security Agreement, as applicable, unless the context otherwise requires. The Collateral Schedules may be amended, restated, modified or supplemented, from time to time by means of Collateral Supplements to the extent contemplated by the Arrangement Agreement or the Security Agreement. The Collateral Schedules may not be otherwise amended, restated, modified or supplemented, except in accordance with the terms of Section 12.1 of the Arrangement Agreement and Section 6.1 of the Security Agreement.

The following Schedules are included herein:

Schedule A – Organizational Information Schedule
Schedule B – Pledged Equity Interests
Schedule C – Deposit Accounts, Commodity Accounts and Securities Accounts
Schedule D – Intellectual Property
Schedule E – Investment Property
Schedule F – Letter of Credit Rights
Schedule G – Locations of Collateral
Schedule H – Key Life Insurance Policies
Schedule I – Chattel Paper and Instruments
Schedule J – Commercial Tort Claims
Schedule K – Material Excluded Property

[*Signature page follows*]

IN WITNESS WHEREOF, the undersigned have executed the Collateral Schedules as of the date hereof.

TESLA MOTORS, INC.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

TESLA MOTORS NEW YORK LLC
By: Tesla Motors, Inc., its sole member

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

SCHEDULE A

Organizational Information Schedule

OBLIGORS:

(A)	(B)	(C)	(D)	(E)
Full Legal Name	**Jurisdiction and Type of Organization**	**Organizational Identification Number**	**Federal Employer ID Number**	**Jurisdiction of Chief Executive Office**
Tesla Motors, Inc.	Delaware corporation	3677166	91-2197729	California
Tesla Motors New York LLC	New York limited liability company	N/A	27-1077991	New York

Fixture filings with respect to the Deer Creek Lease to be made with the Office of the Clerk-Recorder in Santa Clara County, California.

Intellectual property security agreements to be filed with the United States Patent and Trademark Office with respect to Borrower's Intellectual Property

NON-GUARANTOR SUBSIDIARIES:

Full Legal Name	Jurisdiction and Type of Organization	Owned by an Obligor (Y/N)	Controlled Foreign Corporation (Y/N)
Tesla Motors Limited	United Kingdom Private Limited Company	Y	Y
Tesla Motors Taiwan Limited	Taiwan Limited Company	Y	Y
Tesla Motors GmbH	German Company with Limited Liability	Y	Y
Tesla Motors Canada Inc.	Canada Corporation	Y	Y
Tesla Motors S.A.R.L.	Monaco Limited Liability Company	Y[1]	Y

[1] Tesla Motors, Inc owns 99% of the issued and outstanding equity interests of Tesla Motors S A R L

SCHEDULE B

Pledged Equity Interests

Company (Owner)	Stock Issuer	Jurisdiction of Issuer	Class of Stock	Certificated (Y/N)	Certificate No.	Par Value	No. of Shares / Units	% of Equity Interests Outstanding
Borrower	Tesla Motors Limited	United Kingdom	Common	Y	4	£1	65	65%
Borrower	Tesla Motors Taiwan Limited	Taiwan	Common	N	N/A	N/A	65% of all outstanding shares	65%
Borrower	Tesla Motors GmbH	Germany	Common	N	N/A	€1	16,250	65%
Borrower	AC Propulsion, Inc.	California	Common	Y	43	None	2,677	100%
Borrower	Tesla Motors New York LLC	New York	Investor common unit	N	N/A	N/A	100	100%
Borrower	Tesla Motors Canada Inc.	Canada	Common	Y	CS-1	None	65	65%
Borrower	Tesla Motors S.A.R.L.	Monaco	Common	N	N/A	€150	64	65%

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

SCHEDULE C

Deposit Accounts, Commodity Accounts and Securities Accounts

Deposit Accounts:

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	Checking	[redacted]	[redacted]			
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	Money Market					
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	Money Market					
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	Checking					

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	Checking	[redacted]	[redacted]			
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash					
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash					
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash					
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash					

***CONFIDENTIAL** - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash	[redacted]				
Tesla Motors, Inc.	City National Bank, 2001 N. Main St., Suite 120, Walnut Creek, 94596	[redacted]	CD-Restricted Cash					
Tesla Motors, Inc.	City National Bank, 555 South Flower St, 24th Floor Los Angeles, CA 90071	[redacted]	Checking Euro Acct					
Tesla Motors, Inc.	Wells Fargo Bank, N.A. Grand Cayman Branch P.O. Box Cardinal Ave Grand Cayman, Cayman Islands	[redacted]	Checking GBP Acct					

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	Wells Fargo Bank, N.A. 400 Hamilton Ave Ste 100, Palo Alto, CA 94301	[redacted]	Checking	[redacted]	[redacted]			
Tesla Motors, Inc.	Wells Fargo Bank, N.A. Grand Cayman Branch P.O. Box Cardinal Ave Grand Cayman, Cayman Islands	[redacted]	Checking Euro Acct					
Tesla Motors, Inc.	Wells Fargo Bank, N.A. 400 Hamilton Ave Ste 100, Palo Alto, CA 94301	[redacted]	CD-Restricted Cash					
Tesla Motors, Inc.	HSBC 601 Montgomery Street, Suite 1000, SF, CA 94111	[redacted]	Checking					
Tesla Motors, Inc.	PayPal 7700 East Port Parkway, La Vista NE 68128	[redacted]	Processing					

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose	Excluded Accounts			
					Permitted Restricted Deposit (Y/N)	Deposit Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	City National Bank, 555 South Flower St, 24th Floor Los Angeles, CA 90071	[redacted]	CD-Restricted Cash	[redacted]	[redacted]			
Tesla Motors, Inc.	Wells Fargo Bank, N.A. 400 Hamilton Ave Ste 100, Palo Alto, CA 94301	[redacted]	Checking					

Securities Accounts:

Company	Name and Address of Financial Institution	Account Number	Account Name	Purpose	Excluded Account			
					Permitted Restricted Deposit (Y/N)	Securities Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	Wells Fargo Securities, LLC 121 Park Central Plaza 4th Floor San Jose, CA 95113	[redacted]	Money Market	[redacted]	[redacted]			

Company	Name and Address of Financial Institution	Account Number	Account Name	Purpose	Excluded Account			
					Permitted Restricted Deposit (Y/N)	Securities Account with a Balance of Less Than $250,000 (Y/N)	Payroll Account (Y/N)	Escrow or Segregated Account Required by Law (Y/N)
Tesla Motors, Inc.	PNC Bank, National Association, 800 Connecticut Avenue, NW 4th Floor, Washington DC 20006	[redacted]	ATVM Tesla Dedicated Account	[redacted]	[redacted]			
Tesla Motors, Inc.	PNC Bank, National Association, 800 Connecticut Avenue, NW 4th Floor, Washington DC 20006	[redacted]	ATVM Tesla Initial Debt Service Account	[redacted]				

Commodity Accounts:

- None

SCHEDULE D

Intellectual Property

TESLA MOTORS, INC.

Trademarks and Trademark Applications

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status
Tesla Motors, Inc.	Australia	MODEL S (Cl 12, 36, 37)	App. No. 1322878	Application Date 25 Sep 2009	Pending
Tesla Motors, Inc.	Australia	TESLA (Cl 12, 36, 37)	App. No. 1327981	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	Australia	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 1327982	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	Canada	MODEL S (Cl 12, 36, 37)	App. No. 1453068	Application Date 25 Sep 2009	Pending
Tesla Motors, Inc.	Canada	TESLA (Cl 12, 36)	App. No. 1455707	Application Date 16 Oct 2009	Pending
Tesla Motors, Inc.	Canada	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 1455712	Application Date 16 Oct 2009	Pending
Tesla Motors, Inc.	China	MODEL S (cl 12)	n/a	Application Date 27 Sep 2009	Pending
Tesla Motors, Inc.	China	MODEL S (cl 36)	App. No. 7728846	Application Date 27 Sep 2009	Pending
Tesla Motors, Inc.	China	MODEL S (cl 37)	n/a	Application Date 27 Sep 2009	Pending
Tesla Motors, Inc.	China	TESLA (cl 12)	App. No. 7792673	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	China	TESLA (cl 36)	App. No. 7792674	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	China	TESLA (cl 37)	App. No. 7792675	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	China	TESLA and T in Crest Design (cl 12)	App. No. 7792676	Application Date 28 Oct 2009	Pending
Tesla Motors, Inc.	China	TESLA and T in Crest Design (cl 36)	App. No. 7792677	Application Date 28 Oct 2009	Pending
Tesla Motors, Inc.	China	TESLA and T in Crest Design (cl 37)	App. No. 7792678	Application Date 28 Oct 2009	Pending
Tesla Motors, Inc.	CTM	MODEL S (Cl 12, 36, 37)	App. No. 8575961	Application Date 25 Sep 2009	Pending
Tesla Motors, Inc.	CTM	T Design (Cl 12, 14, 16, 18, 20, 21, 25, 27, 28, 36, 37,	App. No. 8741101	Application Date 08 Dec 2009	Pending

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status
		39, 40)			
Tesla Motors, Inc.	CTM	TESLA (Cl 7, 9, 12, 14, 16, 18, 25, 27, 28, 35, 36, 41, 42, 45)	App. No. 5678479	Application Date: 9 Feb 2007	Pending
Tesla Motors, Inc.	CTM	TESLA and T in Crest Design (Cl 7, 9, 12, 14, 16, 18, 25, 27, 28, 35, 36, 41, 42, 45)	App. No. 5678602	Application Date: 9 Feb 2007	Pending
Tesla Motors, Inc.	CTM	TESLA stylized (Cl 12, 14, 16, 18, 20, 21, 25, 27, 28, 36, 37, 39, 40)	App. No. 8741225	Application Date 08 Dec 2009	Pending
Tesla Motors, Inc.	Hong Kong	MODEL S (Cl 12, 36, 37)	App. No. 301438290	Application Date 25 Sept 2009	Pending
Tesla Motors, Inc.	Hong Kong	TESLA (Cl 12, 36, 37)	App. No. 301457730	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	Hong Kong	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 301457749	Application Date 23 Oct 2009	Pending
Tesla Motors, Inc.	Japan	MODEL S (Cl 12, 36, 37)	App. No. 72909/2009	Application Date 25 Sep 2009	Pending
Tesla Motors, Inc.	Japan	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 80934/2009	Application Date 26 Oct 2009	Pending
Tesla Motors, Inc.	Japan	TESLA (Cl 12, 36, 37)	App. No. 80933/2009	Application Date 26 Oct 2009	Pending
Tesla Motors, Inc.	Monaco	MODEL S (Cl 12, 36, 37)	N/A	Application Date 25 Sept 2009	Pending
Tesla Motors, Inc.	Monaco	TESLA (Cl 12, 36, 37)	App. No. 29147	Application Date 30 Oct 2009	Pending
Tesla Motors, Inc.	Monaco	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 29148	Application Date 30 Oct 2009	Pending
Tesla Motors, Inc	Norway	MODEL S (Cl 12, 37)	App. No. 200909706	Application Date 25 Sept 2009	Pending
Tesla Motors, Inc	Norway	TESLA (Cl 12, 36, 37)	App. No. 200911123	Application Date 28 Oct. 2009	Pending
Tesla Motors, Inc	Norway	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 200911125	Application Date 28 Oct. 2009	Pending
Tesla Motors, Inc	Russian Federation	MODEL S (Cl. 12, 37)	App. No. 2009723764	Application Date 25 Sept. 2009	Pending
Tesla	Russian	MODEL S (Cl. 36)	App. No.	Application Date	Pending

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status
Motors, Inc	Federation		2009724142	30 Sept. 2009	
Tesla Motors, Inc	Russian Federation	TESLA (Cl 12, 36, 37)	App. No. 2009726439	Application Date 23 Oct. 2009	Pending
Tesla Motors, Inc	Russian Federation	TESLA and T in Crest Design (Cl 12, 36, 37)	App. No. 2009726438	Application Date 23 Oct. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	MODEL S (Cl. 12)	App. No. 147558	Application Date 27 Sept. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	MODEL S (Cl. 36)	App. No. 147559	Application Date 27 Sept. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	MODEL S (Cl. 37)	App. No. 147560	Application Date 27 Sept. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA (Cl. 12)	App. No. 148972	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA (Cl. 36)	App. No. 148973	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA (Cl. 37)	App. No. 148974	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA and T in Crest Design (Cl. 12)	App. No. 148975	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA and T in Crest Design (Cl. 36)	App. No. 148976	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	Saudi Arabia	TESLA and T in Crest Design (Cl. 37)	App. No. 148977	Application Date 17 Nov. 2009	Pending
Tesla Motors, Inc	South Africa	MODEL S (Cl. 12, 37)	App. No. 2009/18858	Application date 25 Sept. 2009	Pending
Tesla Motors, Inc	South Africa	MODEL S (Cl. 36)	App. No. 2009/18859	Application date 25 Sept. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA (Cl. 12)	App. No. 2009/21133	Application date 23 Oct. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA (Cl. 36)	App. No. 2009/21134	Application date 23 Oct. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA (Cl. 37)	App. No. 2009/21135	Application date 23 Oct. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA and T in Crest Design (Cl. 12)	App. No. 2009/21136	Application date 23 Oct. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA and T in Crest Design (Cl. 36)	App. No. 2009/21137	Application date 23 Oct. 2009	Pending
Tesla Motors, Inc	South Africa	TESLA and T in Crest Design (cl.	App. No. 2009/21138	Application date 23 Oct. 2009	Pending

Company	Country	Trademark	Application/ Registration No.	Application/ Registration Date	Status
		37)			
Tesla Motors, Inc	South Korea	MODEL S (Cl. 12, 37)	App. No. 45-2009-3555	Application date 25 Sept. 2009	Pending
Tesla Motors, Inc	South Korea	MODEL S (Cl. 36)	App. No. 41-2009-22946	Application date 28 Sept. 2009	Pending
Tesla Motors, Inc	South Korea	TESLA (Cl. 12, 36, 37)	App. No. 45-2009-3929	Application date 28 Oct. 2009	Pending
Tesla Motors, Inc	South Korea	TESLA and T in Crest Design (Cl. 12, 36, 37)	App. No. 45-2009-3928	Application date 30 Oct. 2009	Pending
Tesla Motors, Inc	Switzerland	MODEL S (Cl. 12, 36, 37)	App. No. 60569/2009	Application date 25 Sept. 2009	Pending
Tesla Motors, Inc	Switzerland	TESLA (Cl. 12, 36, 37)	App. No. 61899/2009	Application date 27 Oct. 2009	Pending
Tesla Motors, Inc	Switzerland	TESLA and T in Crest Design (Cl. 12, 36, 37)	App. No. 61900/2009	Application date 27 Oct. 2009	Pending
Tesla Motors, Inc	United States	MODEL S (Cl. 12, 37)	App. No. 77/701,341	Application date 27 Mar. 2009	Pending
Tesla Motors, Inc	United States	T Design (Cl. 12, 14, 16, 18, 20, 21, 25, 27, 28, 36, 37, 39, 40)	App. No. 77/785,858	Application date 21 July 2009	Pending
Tesla Motors, Inc	United States	TELSA MOTORS (Cl. 36, 37)	Reg. No. 3,684,466	Registered 15 Sept. 2009	Registered
Tesla Motors, Inc	United States	TESLA (stylized) (Cl. 12, 14, 16, 18, 20, 21, 25, 27, 28, 36, 37, 39, 40)	App. No. 77/785,919	Application date 21 July 2009	Pending
Tesla Motors, Inc	United States	TESLA and T in Crest Design (Cl. 12, 14, 16, 18, 20, 21, 25, 27, 28, 36, 37, 39, 40)	App. No. 77/785,934	Application date 21 July 2009	Pending
Tesla Motors, Inc	United States	TESLA MOTORS (Cl. 12)	Reg. No. 3,403,726	Registered 25 Mar. 2008	Registered
Tesla Motors, Inc	United States	TESLA ROADSTER (Cl. 12)	Reg. No. 3,269,364	Registered 24 July 2007	Registered

Trade Names

- TESLA MOTORS

Domain Names

Name	Tld	Registrar	Expiration Date
TESLAUSA.COM	.com	registercheaper	05/18/2009
TESLAUK.CO.UK	.co.uk	registercheaper	05/18/2010
TESLAROASTER.COM	.com	registercheaper	06/03/2010
TESLAROADSTER.WS	.ws	registercheaper	02/02/2010
TESLAROADSTER.US	.us	registercheaper	02/01/2010
TESLAROADSTER.TW	.tw	registercheaper	02/03/2010
TESLAROADSTER.TC	.tc	registercheaper	02/01/2010
TESLAROADSTER.ORG	.org	registercheaper	06/03/2009
TESLAROADSTER.NU	.nu	registercheaper	02/08/2010
TESLAROADSTER.NET	.net	registercheaper	06/03/2009
TESLAROADSTER.NAME	.name	registercheaper	02/02/2010
TESLAROADSTER.MS	.ms	registercheaper	02/01/2010
TESLAROADSTER.JP	.jp	registercheaper	01/31/2010
TESLAROADSTER.DE	.de	registercheaper	06/02/2009
TESLAROADSTER.COM.TW	.com.tw	registercheaper	02/03/2010
TESLAROADSTER.COM.CN	.com.cn	registercheaper	02/03/2010
TESLAROADSTER.COM	.com	registercheaper	06/03/2010
TESLAROADSTER.CO.UK	.co.uk	registercheaper	02/09/2011
TESLAROADSTER.CO.NZ	.co.nz	registercheaper	01/03/2010
TESLAROADSTER.CN	.cn	registercheaper	02/03/2010
TESLAROADSTER.CC	.cc	registercheaper	02/02/2010
TESLAROADSTER.BIZ	.biz	registercheaper	02/01/2010
TESLAROADSTER.BE	.be	registercheaper	02/01/2010
TESLAROADSTER.AT	.at	registercheaper	02/01/2010
TESLAMOTORSUSA.COM	.com	registercheaper	01/22/2010
TESLAMOTORSUK.CO.UK	.co.uk	registercheaper	01/23/2011
TESLAMOTORS.TW	.tw	registercheaper	02/03/2010
TESLAMOTORS.TC	.tc	registercheaper	02/01/2010
TESLAMOTORS.ORG	.org	registercheaper	06/03/2010
TESLAMOTORS.NU	.nu	registercheaper	02/08/2010
TESLAMOTORS.NET	.net	registercheaper	06/03/2010
TESLAMOTORS.NAME	.name	registercheaper	02/02/2010
TESLAMOTORS.MS	.ms	registercheaper	02/01/2010
TESLAMOTORS.JP	.jp	registercheaper	01/31/2010
TESLAMOTORS.DE	.de	registercheaper	06/02/2009
TESLAMOTORS.COM.TW	.com.tw	registercheaper	02/03/2010
TESLA-MOTORS.COM	.com	registercheaper	05/18/2011
TESLAMOTORS.COM	.com	network solutions	04/03/2013
TESLA-MOTORS.CO.UK	.co.uk	registercheaper	05/18/2010
TESLAMOTORS.CO.UK	.co.uk	registercheaper	06/03/2010
TESLAMOTORS.BE	.be	registercheaper	02/01/2010
TESLAMOTORCAR.ORG	.org	registercheaper	06/03/2010
TESLAMOTORCAR.NET	.net	registercheaper	06/03/2010
TESLAMOTORCAR.COM	.com	registercheaper	06/03/2010
TESLAMOTOR.ORG	.org	registercheaper	06/03/2010

Name	Tld	Registrar	Expiration Date
TESLAMOTOR.NET	.net	registercheaper	06/03/2010
TESLAMOTOR.COM	.com	registercheaper	06/03/2010
TESLAENERGY.WS	.ws	registercheaper	02/02/2010
TESLAENERGY.US	.us	registercheaper	02/01/2010
TESLAENERGY.TW	.tw	registercheaper	02/03/2010
TESLAENERGY.TC	.tc	registercheaper	02/01/2010
TESLAENERGY.NU	.nu	registercheaper	02/02/2010
TESLAENERGY.NAME	.name	registercheaper	02/02/2010
TESLAENERGY.MS	.ms	registercheaper	02/01/2010
TESLAENERGY.JP	.jp	registercheaper	01/31/2010
TESLAENERGY.COM.TW	.com.tw	registercheaper	02/03/2010
TESLAENERGY.COM.CN	.com.cn	registercheaper	02/03/2010
TESLAENERGY.COM	.com	registercheaper	11/17/2011
TESLAENERGY.CO.UK	.co.uk	registercheaper	01/29/2011
TESLAENERGY.CO.NZ	.co.nz	registercheaper	01/03/2010
TESLAENERGY.CN	.cn	registercheaper	02/03/2010
TESLAENERGY.CC	.cc	registercheaper	02/02/2010
TESLAENERGY.BIZ	.biz	registercheaper	02/01/2010
TESLAENERGY.BE	.be	registercheaper	02/01/2010
TESLAENERGY.AT	.at	registercheaper	02/01/2010
TELSAROADSTER.WS	.ws	registercheaper	02/02/2010
TELSAROADSTER.US	.us	registercheaper	02/01/2010
TELSAROADSTER.TW	.tw	registercheaper	02/03/2010
TELSAROADSTER.TC	.tc	registercheaper	02/01/2010
TELSAROADSTER.ORG	.org	registercheaper	02/02/2010
TELSAROADSTER.NU	.nu	registercheaper	02/08/2010
TELSAROADSTER.NET	.net	registercheaper	02/02/2010
TELSAROADSTER.NAME	.name	registercheaper	02/02/2010
TELSAROADSTER.MS	.ms	registercheaper	02/01/2010
TELSAROADSTER.JP	.jp	registercheaper	02/28/2010
TELSAROADSTER.INFO	.info	registercheaper	02/02/2010
TELSAROADSTER.EU	.eu	registercheaper	02/01/2010
TELSAROADSTER.DE	.de	registercheaper	02/01/2010
TELSAROADSTER.COM.TW	.com.tw	registercheaper	02/03/2010
TELSAROADSTER.COM.CN	.com.cn	registercheaper	02/03/2010
TELSAROADSTER.COM	.com	registercheaper	02/08/2010
TELSAROADSTER.CO.UK	.co.uk	registercheaper	02/02/2011
TELSAROADSTER.CO.NZ	.co.nz	registercheaper	01/03/2010
TELSAROADSTER.CN	.cn	registercheaper	02/03/2010
TELSAROADSTER.CC	.cc	registercheaper	02/02/2010
TELSAROADSTER.BIZ	.biz	registercheaper	02/01/2010
TELSAROADSTER.BE	.be	registercheaper	02/01/2010
TELSAROADSTER.AT	.at	registercheaper	02/01/2010
TELSAMOTORS.WS	.ws	registercheaper	02/03/2010
TELSAMOTORS.US	.us	registercheaper	02/01/2010
TELSAMOTORS.TW	.tw	registercheaper	02/03/2010
TELSAMOTORS.TC	.tc	registercheaper	02/01/2010

Name	Tld	Registrar	Expiration Date
TELSAMOTORS.ORG	.org	registercheaper	02/02/2010
TELSAMOTORS.NU	.nu	registercheaper	02/02/2010
TELSAMOTORS.NET	.net	registercheaper	02/02/2010
TELSAMOTORS.NAME	.name	registercheaper	02/02/2010
TELSAMOTORS.MS	.ms	registercheaper	02/01/2010
TELSAMOTORS.JP	.jp	registercheaper	02/28/2010
TELSAMOTORS.INFO	.info	registercheaper	02/02/2010
TELSAMOTORS.EU	.eu	registercheaper	02/01/2010
TELSAMOTORS.DE	.de	registercheaper	02/01/2010
TELSAMOTORS.COM.TW	.com.tw	registercheaper	02/03/2010
TELSAMOTORS.COM.CN	.com.cn	registercheaper	02/03/2010
TELSAMOTORS.COM	.com	registercheaper	12/13/2011
TELSAMOTORS.CO.UK	.co.uk	registercheaper	02/02/2011
TELSAMOTORS.CO.NZ	.co.nz	registercheaper	01/31/2010
TELSAMOTORS.CN	.cn	registercheaper	02/03/2010
TELSAMOTORS.CC	.cc	registercheaper	02/02/2010
TELSAMOTORS.BIZ	.biz	registercheaper	02/01/2010
TELSAMOTORS.BE	.be	registercheaper	02/01/2010
TELSAMOTORS.AT	.at	registercheaper	02/01/2010
TELSAENERGY.WS	.ws	registercheaper	02/02/2010
TELSAENERGY.US	.us	registercheaper	02/01/2010
TELSAENERGY.TW	.tw	registercheaper	02/03/2010
TELSAENERGY.TC	.tc	registercheaper	02/01/2010
TELSAENERGY.ORG	.org	registercheaper	01/23/2010
TELSAENERGY.NU	.nu	registercheaper	02/09/2010
TELSAENERGY.NET	.net	registercheaper	01/23/2010
TELSAENERGY.NAME	.name	registercheaper	02/02/2010
TELSAENERGY.MS	.ms	registercheaper	02/01/2010
TELSAENERGY.JP	.jp	registercheaper	01/31/2010
TELSAENERGY.INFO	.info	registercheaper	02/02/2010
TELSAENERGY.EU	.eu	registercheaper	02/01/2010
TELSAENERGY.DE	.de	registercheaper	01/22/2010
TELSAENERGY.COM.TW	.com.tw	registercheaper	02/03/2010
TELSAENERGY.COM.CN	.com.cn	registercheaper	02/03/2010
TELSAENERGY.COM	.com	registercheaper	01/23/2010
TELSAENERGY.CO.UK	.co.uk	registercheaper	01/23/2011
TELSAENERGY.CO.NZ	.co.nz	registercheaper	01/03/2010
TELSAENERGY.CN	.cn	registercheaper	02/03/2010
TELSAENERGY.CC	.cc	registercheaper	02/02/2010
TELSAENERGY.BIZ	.biz	registercheaper	02/01/2010
TELSAENERGY.BE	.be	registercheaper	02/01/2010
TELSAENERGY.AT	.at	registercheaper	02/01/2010
OPENEVSE.ORG	.org	registercheaper	10/12/2010
OPENEVSE.COM	.com	registercheaper	10/12/2009
ACECHARGINGSYSTEM.ORG	.org	registercheaper	08/31/2011
ACECHARGINGSYSTEM.COM	.com	registercheaper	08/31/2011
ACECHARGING.ORG	.org	registercheaper	08/31/2011

Name	Tld	Registrar	Expiration Date
ACECHARGING.COM	.com	registercheaper	08/31/2010

Patents and Patent Applications

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
1	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	11/129,118 5/12/2005		
2	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	PCT/US06/01 8529 5/12/2006		PCT of 11/129,118
3	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	2608448 5/12/2006		National phase filing of 11/129,118 (Canada)
4	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	06759733.6 11/20/2007		National phase filing of 11/129,118 (Europe)
5	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	8866/DELNP/ 2007 11/19/2007		National phase filing of 11/129,118 (India)
6	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	2008-511430 11/12/2007		National phase filing of 11/129,118 (Japan)
7	System and Method for Fusibly Linking Batteries	11/353,648 2/13/2006		
8	System and Method for Fusibly Linking Batteries	PCT/US07/00 3986 2/13/2007		PCT of 11/353,648
9	System and Method for Fusibly Linking Batteries	2,645,056 2/13/2007		National phase filing of 11/353,648 (Canada)
10	System and Method for Fusibly Linking Batteries	07750798.6 2/13/2007		National phase filing of 11/353,648 (Europe)
11	System and Method for Fusibly Linking Batteries	7681/DELNP/ 2008 11/09/2008		National phase filing of 11/353,648 (India)
12	System and Method for Fusibly Linking Batteries	0701002754 06/04/2007		National phase filing of 11/353,648 (Thailand)
13	System and Method for Interconnection of Battery Packs	11/414,050 4/27/2006		
14	System and Method for Interconnection of Battery Packs	PCT/US07/01 0289 4/27/2007		PCT of 11/414,050
15	System and Method for Inhibiting the Propagation of an Exothermic Event	11/444,572 5/31/2006		
16	System and Method for Inhibiting the Propagation of an Exothermic Event	PCT/US07/01 2841 5/30/2007		PCT of 11/444,572

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
17	System and Method for Inhibiting the Propagation of an Exothermic Event	2656834 5/30/2007		National phase filing of 11/444,572 (Canada)
18	System and Method for Inhibiting the Propagation of an Exothermic Event	07795545.8 5/30/2007		National phase filing of 11/444,572 (Europe)
19	System and Method for Inhibiting the Propagation of an Exothermic Event	0701002722 6/01/2007		National phase filing of 11/444,572 (Thailand)
20	System and Method for an Efficient Rotor for an Electric Motor	11/452,793 6/13/2006		
21	System and Method for an Efficient Rotor for an Electric Motor	PCT/US07/01 0799 5/2/2007		PCT of 11/452,793
22	System and Method for an Efficient Rotor for an Electric Motor	PCT/US2007/ 010799 5/2/2007		National phase filing of 11/452,793 (Canada)
23	System and Method for an Efficient Rotor for an Electric Motor	PCT/US2007/ 010799 5/2/2007		National phase filing of 11/452,793 (Europe)
24	Method of Balancing Batteries	11/488,353 7/18/2006	7,602,145 10/13/2009	
25	Method of Balancing Batteries	PCT/US07/14 917 6/27/07		PCT of 11/488,353
26	Method of Balancing Batteries	0701003540		National phase filing of 11/488,353 (Thailand)
27	System and Method for Opening Nearby Garage Doors	11/489,387 7/18/2006		
28	System and Method for Adjusting the Time of a Clock to Match the Time Zone at the Location of the Clock	11/591,207 10/31/2006		
29	Tunable Frangible Battery Pack System	11/731,574 3/20/2007		
30	Tunable Frangible Battery Pack System	PCT/US08/03 466 3/15/2008		PCT filing of 11/731,574
31	Tunable Frangible Battery Pack System	96126044 7/17/2007		National phase filing of 11/731,574 (Taiwan)
32	An Electro Mechanical Connector for use in Electrical Applications	11/729,817 3/29/2007	7,404,720 7/29/2008	
33	An Electro Mechanical Connector for use in Electrical Applications	PCT/US08/03 423 3/15/2008		PCT filing of 11/729,817
34	Electric Vehicle Thermal Management System	11/786,108 4/11/2007		

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
35	Electric Vehicle Thermal Management System	12/587,539 10/7/2009		Divisional of 11//786,108
36	Electric Vehicle Thermal Management System	PCT/US08/03 262 3/12/2008		PCT of 11/786,108
37	Electric Vehicle Thermal Management System	08742058.4 3/12/2008		National phase filing of 11//786,108 (Europe)
38	Liquid Cooled Rotor Assembly	11/799,540 5/1/2007	7,489,057 2/10/2009	
39	Liquid Cooled Rotor Assembly	12/317,301 12/20/2008	7,579,725 8/25/2009	Divisional of 11/799,540
40	Liquid Cooled Rotor Assembly	PCT/US08/03 342 3/13/2008		PCT of 11/799,540
41	Liquid Cooled Rotor Assembly	078726794.4 3/13/2008		National phase filing of 11/799,540 (Europe)
42	Electric Vehicle Communication Interface	11/818,838 6/15/2007		
43	Electric Vehicle Communication Interface	11/779,678 7/18/2007		CIP of 11/818,838
44	Electric Vehicle Communication Interface	PCT/US09/00 7502 6/13/2008		PCT filing of 11/818,838
45	Optimized Cooling Tube Geometry for Intimate Thermal Contact with Cells	11/820,008 6/18/2007		
46	Optimized Cooling Tube Geometry for Intimate Thermal Contact with Cells	PCT/US08/07 505 6/14/2008		PCT filing of 11/820,008
47	Optimized Cooling Tube Geometry for Intimate Thermal Contact with Cells	TBD 11/16/2009		National phase filing of 11/820,008 (Japan)
48	Early Detection of Battery Cell Thermal Event	11/820,660 6/20/2007		
49	Early Detection of Battery Cell Thermal Event	PCT/US08/07 501 6/13/2008		PCT filing of 11/820,660
50	Battery Pack Thermal Management System	11/779,583 7/18/2007		
51	Battery Pack Thermal Management System	PCT/US08/07 775 6/20/2008		PCT filing of 11/779,583
52	Method of Deactivating Faulty Battery Cells	11/779,620 7/18/2007		

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
53	Method of Deactivating Faulty Battery Cells	PCT/US08/007756 6/20/2008		PCT filing of 11/779,620
54	Method of Deactivating Faulty Battery Cells	TBD TBD		National phase filing of 11/779,620 (Europe)
55	Method of Deactivating Faulty Battery Cells	TBD TBD		National phase filing of 11/779,620 (Japan)
56	Mitigation of Propagation of Thermal Runaway in a Multi-Cell Battery Pack	11/779,654 7/18/2007	7,433,794 10/7/2008	
57	Mitigation of Propagation of Thermal Runaway in a Multi-Cell Battery Pack	PCT/US08/07773 6/20/2008		PCT filing of 11/779,654
58	Mitigation of Propagation of Thermal Runaway in a Multi-Cell Battery Pack	TBD TBD		National phase filing of 11/779,654 (Europe)
59	Systems, Methods, and Apparatus for Battery Charging	11/779,829 7/18/2007		
60	Battery Charging	PCT/US08/68549 6/27/2008		PCT of 11/779,829
61	Method and Apparatus for Battery Potting	11/779,834 7/18/2007		
62	Method and Apparatus for Battery Potting	PCT/US08/68479 6/27/2008		PCT of 11/779,834
63	Battery Charging Based on Cost and Life	11/779,837 7/18/2007		
64	A System for Battery Charging Based on Cost and Life	12/434,041 5/1/2009		Divisional of 11/779,837
65	A Method for Battery Charging Based on Cost and Life	12/434,067 5/1/2009		Divisional of 11/779,837
66	Battery Charging Based on Cost and Life	PCT/US08/67670 6/20/2008		PCT of 11/779,837
67	Charge State Indicator for an Electric Vehicle	11/779,840 7/18/2007		
68	Centralized Multi-Zone Cooling for Increased Battery Efficiency	11/779,843 7/18/2007		
69	[INTENTIONALLY OMITTED]			
70	[INTENTIONALLY OMITTED]			
71	Operation of a Range Extended Electric Vehicle	60/975,474 9/26/2007		
72	Operation of a Range Extended Electric Vehicle	PCT/US08/77842 9/26/2008		PCT of 60/975,474

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
73	User Selection of an Operating Mode for a Range Extended Electric Vehicle	60/975,491 9/26/2007		
74	Method and Apparatus for Cabin Air Management in a Vehicle	12/042,483 3/5/2008		
75	Varying Flux Versus Torque for Maximum Efficiency	12/044,426 3/7/2008		
76	Varying Flux Versus Torque for Maximum Efficiency	PCT/US09/00 1367 3/4/2008		PCT of 12/044,426
77	System and Method for Battery Preheating	12/058,047 3/28/2008		
78	System and Method for Battery Preheating	PCT/US09/00 1916 3/26/2009		PCT of 12/058,047
79	Voltage Estimation Feedback of Overmodulated Signal for an Electrical Vehicle	12/100,801 4/10/2008		
80	Voltage Estimation Feedback of Overmodulated Signal for an Electrical Vehicle	PCT/US09/00 2224 4/9/2009		PCT of 12/100,801
81	Weighted Field Oriented Motor Control for a Vehicle	12/100,836 4/10/2008		
82	Weighted Field Oriented Motor Control for a Vehicle	PCT/US09/00 2220 4/9/2009		PCT of 12/100,836
83	Systems and Methods for Diagnosing Battery Voltage Mis-Reporting	12/142,514 6/19/2008		
84	Diagnosing Battery Voltage Mis-Reporting	PCT/US09/00 3614 6/17/2009		PCT of 12/142,514
85	Voltage Dividing Vehicle Heater System and Method	12/144,334 6/23/2008		Claims benefit of US Prov. Ap. 60/950,600
86	Flux Controlled Motor Management	12/252,186 10/15/2008		
87	Improved Heat Dissipation for Large Battery Packs	12/259,881 10/28/2008		
88	Improved Heat Dissipation for Large Battery Packs	09174243.7 10/27/2009		National phase filing of 12/259,881 (Europe)
89	Method and Apparatus for the External Application of Battery Pack Encapsulant	12/315,303 12/2/2008		
90	Increased Resistance to Thermal Runaway Through Differential Heat Transfer	12/333,631 12/12/2008		
91	Induction Motor with Improved Torque Density	12/317,730 12/29/2008		
92	Multi-Mode Charging System for an Electric Vehicle	12/321,279 1/16/2009		

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
93	Multi-Mode Charging System for an Electric Vehicle	12/322,286 1/29/2009	7,629,773 12/8/2009	Continuation of 12/321,279
94	Multi-Mode Charging System for an Electric Vehicle	12/322,219 1/29/2009	7,629,772 12/8/2009	Continuation of 12/321,279
95	Multi-Mode Charging System for an Electric Vehicle	12/322,221 1/29/2009	7,622,897 11/24/2009	Continuation of 12/321,279
96	Multi-Mode Charging System for an Electric Vehicle	TBD TBD		National phase filing of 12/321,279 (Europe)
97	Multi-Mode Charging System for an Electric Vehicle	TBD TBD		National phase filing of 12/321,279 (Japan)
98	System for Optimizing Battery Pack Cut-Off Voltage	12/322,217 1/29/2009		
99	System for Optimizing Battery Pack Cut-Off Voltage	TBD TBD		National phase filing of 12/322,217 (Europe)
100	All Wheel Drive Electric Vehicle Power Assist Drive System	12/322,218 1/29/2009		
101	All Wheel Drive Electric Vehicle Power Assist Drive System	12/378,790 2/19/2009		Continuation of 12/322,218
102	All Wheel Drive Electric Vehicle Power Assist Drive System	12/586,493 2/19/2009		Divisional of 12/378,790
103	Partial Dielectric Barriers on Battery Cells for Improved Battery Pack Mechanical & Thermal Performance	61/206,586 1/31/2009		
104	Partial Dielectric Barriers on Battery Cells for Improved Battery Pack Mechanical & Thermal Performance	12/381,821 3/17/2009		Claims priority from provisional app. 61/206,586
105	Partial Dielectric Barriers on Battery Cells for Improved Battery Pack Mechanical & Thermal Performance	12/383,871 3/30/2009		Claims priority from provisional app. 61/206,586
106	Intelligent Temperature Control System for Extending Battery Pack Life	12/378,909 2/20/2009		
107	Battery Pack Temperature Optimization Control System	12/381,986 3/18/2009		Continuation-in-part of 12/378,909
108	Control System for an All Wheel Drive Electric Vehicle	12/380,427 2/26/2009		
109	Control System for an All Wheel Drive Electric Vehicle	12/381,846 3/17/2009		Continuation of 12/380,427
110	Traction Control System for an Electric Vehicle	12/381,853 3/17/2009		Continuation of 12/380,427
111	AC Motor Winding Pattern	12/383,884 3/30/2009		
112	Battery Capacity Estimating Method and Apparatus	12/384,696 4/8/2009		

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
113	Sealed Battery Enclosure	12/386,684 4/22/2009		
114	Interface for Vehicle Function Control Via a Touchscreen	12/456,382 6/15/2009		
115	Battery Thermal Event Detection System Using an Optical Fiber	12/455,173 5/28/2009		
116	Common Mode Voltage Enumeration in a Battery Pack	12/498,251 7/6/2009		
117	Common Mode Voltage Enumeration in a Battery Pack	12/498,280 7/6/2009		Continuation of 12/498,251
118	Battery Thermal Event Detection System Using a Thermally Interruptible Electrical Conductor	12/455,198 5/28/2009		
119	Battery Thermal Event Detection System Using an Electrical Conductor with a Thermally Interruptible Insulator	12/455,248 5/28/2009		
120	Low Temperature Charging of Li-Ion Cells	61/226,636 7/17/2009		
121	Low Temperature Charging of Li-Ion Cells	12/570,640 9/30/2009		Claims priority from provisional app. 61/226,636
122	Fast Charging of Battery Using Adjustable Voltage Control	12/505,256 7/17/2009		
123	Battery Case Design Providing a Robust Mechanical Mount	61/268,125 6/9/2009		
124	Cell Cap Assembly with Recessed Terminal and Enlarged Insulating Gasket	12/456,150 6/12/2009		
125	Cell Cap Assembly with Recessed Terminal and Enlarged Insulating Gasket	12/459,721 7/7/2009		Continuation-in-part of 12/456,150
126	Integrated Battery Pressure Relief and Terminal Isolation System	12/460,279 7/15/2009		Continuation-in-part of 12/456,150
127	Method and Apparatus for Maintaining Cell Wall Integrity During Thermal Runaway Using a High Yield Strength Outer Sleeve	12/504,712 7/17/2009		
128	Method and Apparatus for Maintaining Cell Wall Integrity During Thermal Runaway Using an Outer Layer Comprised of a Material with a High Latent Heat of Fusion	12/460,372 7/17/2009		Continuation of 12/504,712
129	Method and Apparatus for Maintaining Cell Wall Integrity During Thermal Runaway Using Multiple Cell Wall Layers	12/460,342 7/17/2009		Continuation of 12/504,712
130	Method and Apparatus for Maintaining Cell Wall Integrity During Thermal Runaway Using an Outer Layer of Intumescent Material	12/460,423 7/17/2009		Continuation of 12/504,712
131	Cell Thermal Runaway Propagation ResistanceUsing Dual Intumescent Material Layers	12/625,665 11/25/2009		CIP of 12/460,423

#	Title	App. No./ Filing Date	Patent No./ Issue Date	Family Information
132	Cell Thermal Runaway Propagation ResistanceUsing an Internal Layer of Intumescent Material	12/592,558 11/25/2009		Continuation of 12/625,665
133	Cell Thermal Runaway Propagation Resistant Battery Pack	12/592,561 11/25/2009		Continuation of 12/625,665
134	Multi-Wall Battery for Maintaining Cell Wall Integrity During Thermal Runaway	12/460,346 7/17/2009		Continuation of 12/504,712
135	Cell Separator for Minimizing Thermal Runaway Propagation within a Battery Pack	12/545,146 8/21/209		
136	Thermal Barrier Structure for Containing Thermal Runaway Propagation within a Battery Pack	12/584,074 8/31/2009		
137	Active Thermal Runaway Mitigation System for Use within a Battery Pack	12/558,494 9/12/2009		
138	Method and Apparatus for the External Application of a Battery Pack Adhesive	12/586,846 9/28/2009		
139	Determining Battery DC Impedance	12/570,745 9/30/2009		
140	Automobile User Interface	61/278,337 10/5/2009		
141	Battery Charging Time Optimization System	12/612,770 11/5/2009		
142	Battery Charging Time Optimization System	12/590,412 11/5/2009		Continuation of 12/612,770
143	Battery Charging Time Optimization System	12/590,414 11/5/2009		Continuation of 12/612,770
144	Battery Cell with Center Pin Comprised of a Low Melting Point Material	61/281,479 11/17/2009		

Copyrights and Copyright Applications

The Borrower does not obtain registered copyrights for its original works of authorship; rather, the Borrower simply relies on statutory copyright which vests ownership with the Borrower from inception. The various types of copyrighted material, includes but is not limited to the following:

- Various Software and Associated Documentation for use and Testing of the Tesla Roadster
- Owner Manuals and Product Documentation
- Technical Studies and White Papers
- Marketing Material and Collateral

Licensing Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	May 2004	Technology License Agreement	AC Propulsion Inc.	December 2014

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	June 15, 2007	License Agreement	Mattel, Inc.	Perpetuity
Tesla Motors, Inc.	May 31, 2007	Automobile License and Marketing Agreement	Microsoft Corporation	None (but only covers Gotham Racing 4 0)
Tesla Motors, Inc.	July 2005	Manufacturing Services Agreement	Lotus Cars, Ltd.	1700 Cars or March 2011
Tesla Motors, Inc.	October 15, 2009 (effective as of December 30, 2009)	Dealer Agreement	Tesla Motors New York LLC	Perpetuity
Tesla Motors, Inc.	September 29, 2006	Software License Agreement	Systech Integrators, Inc.	Perpetuity (unless terminated pursuant to terms of license agreement)
Tesla Motors, Inc.	August 20, 2008	Master Sales and Services Agreement	Arkona, Inc.	Perpetuity (unless terminated pursuant to terms of license agreement)
Tesla Motors, Inc.	June 18, 2009	License to Use Image(s) for Promotional Purposes	Epson America, Inc.	June 18, 2013
Tesla Motors, Inc.	August 28, 2009	Car Manufacturer License Agreement	Electronic Arts, Inc.	August 28, 2010
Tesla Motors, Inc.	May 4, 2009	In-Game Branding Agreement	Sony Computer Entertainment Inc.	Until *Gran Turismo 5* and any sequels are no longer manufactured and/or sold

Tesla Motors, Inc. also enters into commercial "off-the-shelf" or "shrink-wrap" software licenses in the ordinary course of business

Trade Secrets and Know-How

A list of the Borrower's material trade secrets and know-how can be summarized as follows.

Battery

Battery manufacturing process

- Order and design of assembly operations
- Configuration and distance between cells
- Choice of adhesives
- Adhesive dispensing methods and custom-designed equipment
- In-line quality confirmation equipment
- Methods to prevent propagation of cell thermal runaway
- End-of-production line module test (equipment and methods)
- Water penetration testing methods

Propagation testing methodology

- Cell abuse testing
- Pack abuse testing

State of Charge measuring

Cell and Pack testing methods

- Drive profile
- Lifetime forecasting methodology
- Cell test data archive (multiple vendors, form factors, chemistries)
- Pack testing hardware
- Custom-built cycle equipment

Motor

Motor manufacturing process

- Stator winding methodology
- Rotor brazing
- Rotor balancing
- Heat sink optimization and design

Dynamometer equipment and powertrain testing methods

- Dynamometer control algorithms
- Custom built test equipment

PEM

Power electronics test methodology and equipment
Thermal design
Magnetics design (inductors, filters, etc.)

General

Supplier identity and relationships

TESLA MOTORS NEW YORK LLC

Trademarks and Trademark Applications

- None.

Trade Names

- None.

Domain Names

- None.

Patents and Patent Applications

- None.

Copyrights and Copyright Applications

- None.

Licensing Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors New York LLC	October 15, 2009 (effective as of December 30, 2009)	Dealer Agreement	Tesla Motors, Inc.	Perpetuity

Trade Secrets and Know-How

- None.

SCHEDULE E

Investment Property

Pledged Equity Interests:

All of the Capital Stock listed on Schedule B to these Collateral Schedules is incorporated herein by reference.

Pledged Debt:

Indebtedness consisting of existing payments made by Tesla Motors, Inc. to Tesla Motors Limited, Tesla Motors GmbH, Tesla Motors Taiwan Limited, Tesla Motors Canada Inc. and Tesla Motors S.A.R.L. in advance for services rendered or goods sold, which advance payments are used to cover operating expenses, permitted under the Arrangement Agreement.

Securities Accounts:

The Securities Accounts listed on Schedule C to these Collateral Schedules are incorporated herein by reference.

Commodity Accounts:

None

Other Investment Property:

None

SCHEDULE F

Letter of Credit Rights

None

SCHEDULE G

Locations of Collateral

Tesla Motors, Inc. maintains Equipment, Inventory and other assets at the following locations in the United States of America:

Name	Location	Location Type[2]	Value of assets exceeds $1,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		S	
		S	
		L	
		S	
		S	
		W	
		S	
		L	
		S	
		S	
		S	
		S	
		S	
		S	
		L	
		S	

[2] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

Name	Location	Location Type[2]	Value of assets exceeds $1,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		L	
		L	
		S	
		S	
		S	
		S	
		S	
		W	
		S	
		L	
		S	
		S	
		L	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	

Tesla Motors, Inc. maintains Equipment, Inventory and other assets at the following locations outside of the United States of America:

Name	Location	Location Type[3]	Value of assets exceeds $5,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	

[3] This column indicates whether the location is Owned (O), Leased (L), a Supplier (S) or a Warehouse (W).

Name	Location	Location Type[3]	Value of assets exceeds $5,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		W & S	
		S	
		S	
		S	
		S	
		S	
		L	

Name	Location	Location Type[3]	Value of assets exceeds $5,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		L	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		S	
		L	
		L	
		L	
		S	
		S	

Name	Location	Location Type[3]	Value of assets exceeds $5,000,000? (Y/N)
[redacted]	[redacted]	S	[redacted]
		S	
		S	
		S	
		S	

Tesla Motors New York LLC maintains Equipment, Inventory and other assets at the following locations:

None.

SCHEDULE H

Key Life Insurance Policies

None

SCHEDULE I

Chattel Paper and Instruments

None

SCHEDULE J

Commercial Tort Claims

None

SCHEDULE K

Material Excluded Property

The following clause references refer to clauses in the definition of Excluded Property:

(a) None

(b) Equity Interests in the following Subsidiaries to the extent such Equity Interests have not been pledged as Pledged Equity Interests (as described on Schedule B to these Collateral Schedules):

Company (Owner)	Stock Issuer	Jurisdiction of Issuer
Borrower	Tesla Motors Limited	United Kingdom
Borrower	Tesla Motors Taiwan Limited	Taiwan
Borrower	Tesla Motors GmbH	Germany
Borrower	Tesla Motors Canada Inc.	Canada
Borrower	Tesla Motors S.A.R.L.	Monaco

(c) *See* Schedule C of these Collateral Schedules.

(d) None

(e) *See* Schedule D-5 to the Information Certificate.

NOTICE OF GRANT OF SECURITY INTEREST IN PATENTS

NOTICE OF GRANT OF SECURITY INTEREST IN PATENTS (this "Notice"), dated as of January 20, 2010, made by and among TESLA MOTORS, INC., a Delaware corporation (the "Grantor") in favor of MIDLAND LOAN SERVICES, INC., as Collateral Trustee (the "Secured Party"; the Secured Party and the Grantor, collectively the "Parties").

WHEREAS, the Grantor is the owner of the issued patents and patent applications set forth on Schedule I attached hereto (collectively, the "Patents");

WHEREAS, pursuant to the terms and conditions of the Pledge and Security Agreement dated as of January 20, 2010, by and among the Parties and the other grantors party thereto (the "Security Agreement"), the Grantor granted to the Secured Party a security interest in, and lien on, certain intellectual property owned by the Grantor, including the Patents and all proceeds of the foregoing (collectively, the "Patent Collateral"); and

WHEREAS, pursuant to the Security Agreement, the Grantor agreed to execute and deliver to the Secured Party this Notice for purposes of filing the same with the United States Patent and Trademark Office (the "PTO") to confirm, evidence and record the security interest in the Patent Collateral granted pursuant to the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Security Agreement, the Grantor hereby grants to the Secured Party a security interest in, and lien on, the Patent Collateral.

The Grantor hereby authorizes the PTO to file and record this Notice together with the annexed Schedule I.

The Parties hereby acknowledge and agree that the security interest in the Patent Collateral may only be terminated in accordance with the terms of the Security Agreement or upon their mutual consent.

This Notice may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

THIS NOTICE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be duly executed and delivered as of the date first above written.

TESLA MOTORS, INC.

By:_____

Name: Deepak Ahuja

Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By:_____
Name: Bradley J. Hauger
Title: Senior Vice President

Schedule I

Patents and Patent Applications

Patents and/or Published Patent Applications – United States

#	Title	App. No./ Filing Date	Patent No./ Issue Date
1	Method and Apparatus for Mounting, Cooling, Connecting and Protecting Batteries	11/129,118 5/12/2005	
7	System and Method for Fusibly Linking Batteries	11/353,648 2/13/2006	
13	System and Method for Interconnection of Battery Packs	11/414,050 4/27/2006	
15	System and Method for Inhibiting the Propagation of an Exothermic Event	11/444,572 5/31/2006	
20	System and Method for an Efficient Rotor for an Electric Motor	11/452,793 6/13/2006	
24	Method of Balancing Batteries	11/488,353 7/18/2006	7,602,145 10/13/2009
29	Tunable Frangible Battery Pack System	11/731,574 3/20/2007	
32	An Electro Mechanical Connector for use in Electrical Applications	11/729,817 3/29/2007	7,404,720 7/29/2008
34	Electric Vehicle Thermal Management System	11/786,108 4/11/2007	
38	Liquid Cooled Rotor Assembly	11/799,540 5/1/2007	7,489,057 2/10/2009
39	Liquid Cooled Rotor Assembly	12/317,301 12/20/2008	7,579,725 8/25/2009
42	Electric Vehicle Communication Interface	11/818,838 6/15/2007	
43	Electric Vehicle Communication Interface	11/779,678 7/18/2007	
45	Optimized Cooling Tube Geometry for Intimate Thermal Contact with Cells	11/820,008 6/18/2007	
48	Early Detection of Battery Cell Thermal Event	11/820,660 6/20/2007	
50	Battery Pack Thermal Management System	11/779,583 7/18/2007	
52	Method of Deactivating Faulty Battery Cells	11/779,620 7/18/2007	
56	Mitigation of Propagation of Thermal Runaway in a Multi-Cell Battery Pack	11/779,654 7/18/2007	7,433,794 10/7/2008
59	Systems, Methods, and Apparatus for Battery Charging	11/779,829 7/18/2007	
61	Method and Apparatus for Battery Potting	11/779,834 7/18/2007	

#	Title	App. No./ Filing Date	Patent No./ Issue Date
63	Battery Charging Based on Cost and Life	11/779,837 7/18/2007	
64	A System for Battery Charging Based on Cost and Life	12/434,041 5/1/2009	
65	A Method for Battery Charging Based on Cost and Life	12/434,067 5/1/2009	
67	Charge State Indicator for an Electric Vehicle	11/779,840 7/18/2007	
68	Centralized Multi-Zone Cooling for Increased Battery Efficiency	11/779,843 7/18/2007	
74	Method and Apparatus for Cabin Air Management in a Vehicle	12/042,483 3/5/2008	
75	Varying Flux Versus Torque for Maximum Efficiency	12/044,426 3/7/2008	
77	System and Method for Battery Preheating	12/058,047 3/28/2008	
79	Voltage Estimation Feedback of Overmodulated Signal for an Electrical Vehicle	12/100,801 4/10/2008	
81	Weighted Field Oriented Motor Control for a Vehicle	12/100,836 4/10/2008	
85	Voltage Dividing Vehicle Heater System and Method	12/144,334 6/23/2008	
92	Multi-Mode Charging System for an Electric Vehicle	12/321,279 1/16/2009	
93	Multi-Mode Charging System for an Electric Vehicle	12/322,286 1/29/2009	7,629,773 12/8/2009
94	Multi-Mode Charging System for an Electric Vehicle	12/322,219 1/29/2009	7,629,772 12/8/2009
95	Multi-Mode Charging System for an Electric Vehicle	12/322,221 1/29/2009	7,622,897 11/24/2009

Unpublished patent applications – United States

#	App. No.
27	11/489,387
28	11/591,207
35	12/587,539
71	60/975,474
73	60/975,491
83	12/142,514
86	12/252,186
87	12/259,881
89	12/315,303
90	12/333,631
91	12/317,730
98	12/322,217
100	12/322,218
101	12/378,790
102	12/586,493
103	61/206,586
104	12/381,821
105	12/383,871
106	12/378,909
107	12/381,986
108	12/380,427
109	12/381,846
110	12/381,853
111	12/383,884
112	12/384,696
113	12/386,684
114	12/456,382
115	12/455,173
116	12/498,251
117	12/498,280
118	12/455,198
119	12/455,248
120	61/226,636
121	12/570,640
122	12/505,256
123	61/268,125
124	12/456,150
125	12/459,721
126	12/460,279
127	12/504,712
128	12/460,372
129	12/460,342
130	12/460,423

#	App. No.
131	12/625,665
132	12/592558
133	12/592561
134	12/460,346
135	12/545,146
136	12/584,074
137	12/558,494
138	12/586,846
139	12/570,745
140	61/278,337
141	12/612,770
142	12/590,412
143	12/590,414
144	61/281,479

NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS

NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS (this "Notice"), dated as of January 20, 2010, made by and among TESLA MOTORS, INC., a Delaware corporation (the "Grantor") in favor of MIDLAND LOAN SERVICES, INC., as Collateral Trustee (the "Secured Party"; the Secured Party and the Grantor, collectively the "Parties").

WHEREAS, the Grantor is the owner of the trademark and service mark registrations and the trademark and service mark applications set forth on Schedule I attached hereto (collectively, the "Trademarks");

WHEREAS, pursuant to the terms and conditions of the Pledge and Security Agreement dated as of January 20, 2010, by and among the Parties and the other grantors party thereto (the "Security Agreement"), the Grantor granted to the Secured Party a security interest in, and lien on, certain intellectual property owned by the Grantor, including the Trademarks and all proceeds of the foregoing (collectively, the "Trademark Collateral"); and

WHEREAS, pursuant to the Security Agreement, the Grantor agreed to execute and deliver to the Secured Party this Notice for purposes of filing the same with the United States Patent and Trademark Office (the "PTO") to confirm, evidence and record the security interest in the Trademark Collateral granted pursuant to the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Security Agreement, the Grantor hereby grants to the Secured Party a security interest in, and lien on, the Trademark Collateral, *provided* that the grant of security interest shall not include any Trademark that may be deemed invalidated, canceled, unenforceable or abandoned due to the grant and/or enforcement of such security interest unless and until such time that the grant and/or enforcement of the security interest will not affect the validity of such Trademark.

The Grantor hereby authorizes the PTO to file and record this Notice together with the annexed Schedule I.

The Parties hereby acknowledge and agree that the security interest in the Trademark Collateral may only be terminated in accordance with the terms of the Security Agreement or upon their mutual consent.

This Notice may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in Electronic Format. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

THIS NOTICE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN

ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be duly executed and delivered as of the date first above written.

TESLA MOTORS, INC.

By:_____

Name: Deepak Ahuja
Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

Schedule I

Trademark Registrations and Applications

Trademark	Application/ Registration No.	Application/ Registration Date
MODEL S	App. No. 77/701,341	Application date 27 Mar. 2009
T Design	App. No. 77/785,858	Application date 21 July 2009
TELSA MOTORS	Reg. No. 3,684,466	Registered 15 Sept. 2009
TESLA (stylized)	App. No. 77/785,919	Application date 21 July 2009
TESLA and T in Crest Design	App. No. 77/785,934	Application date 21 July 2009
TESLA MOTORS	Reg. No. 3,403,726	Registered 25 Mar. 2008
TESLA ROADSTER	Reg. No. 3,269,364	Registered 24 July 2007

BLOCKED ACCOUNT CONTROL AGREEMENT
(Dedicated Account)

This Blocked Account Control Agreement, dated as of January 20, 2010 (this "Agreement") among TESLA MOTORS, INC., a Delaware corporation (the "Debtor"), PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Financial Institution"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among the Debtor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy ("DOE") and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
THE BLOCKED ACCOUNT

1.1 Establishment of Blocked Account. The Financial Institution hereby confirms and agrees that:

(a) the Financial Institution has established account number [redacted] in the name "ATVM Tesla Dedicated Account" (such account and any successor account, the "Blocked Account") containing subaccounts entitled "Equity Proceeds Subaccount", "Project P Interim True-Up Subaccount", "Project S Interim True-Up Subaccount", "Project P Designated Overrun Subaccount", "Project S Designated Overrun Subaccount" and "Investment Earnings Subaccount" and such other subaccounts as may be required;

(b) the Financial Institution shall not change the name or account number of the Blocked Account without prompt written notice to the Collateral Trustee;

(c) all funds and securities underlying any financial assets credited to the Blocked Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to the Blocked Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank;

(d) All funds and securities delivered to the Financial Institution by the Debtor will be promptly credited to the Blocked Account; and

(e) the Blocked Account is a "securities account" within the meaning of Section 8-501 of the UCC.

1.2 Control of the Blocked Account. Subject to Section 5.3, if the Financial Institution shall receive any entitlement orders originated by the Collateral Trustee directing the

disposition of funds or transfer or redemption of any financial asset relating to the Blocked Account, the Financial Institution shall comply with such entitlement orders without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Blocked Account and hereby acknowledges and consents to such lien. If the Debtor is otherwise entitled to issue entitlement orders and such entitlement orders conflict with any entitlement orders issued by the Collateral Trustee, the Financial Institution shall follow the entitlement orders issued by the Collateral Trustee.

1.3 "Financial Assets" Election. The Financial Institution hereby agrees that each item of property (including, without limitation, any financial asset, security, instrument or cash) credited to the Blocked Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

ARTICLE II
SUBORDINATION AND WAIVER

2.1 Subordination of Lien; Waiver of Set-Off. In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Blocked Account or any financial assets credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Trustee. The Financial Assets credited to the Blocked Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Trustee (except that the Financial Institution may set off (i) all unpaid amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Blocked Account and (ii) the face amount of any checks which have been credited to such Blocked Account but are subsequently returned unpaid because of uncollected or insufficient funds).

ARTICLE III
CONFLICTS AND ADVERSE CLAIMS

3.1 Conflict with Other Agreements.

(a) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail.

(b) The Financial Institution hereby confirms and agrees that:

(i) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Blocked Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders originated by such persons; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Trustee purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders as set forth in this Agreement.

(c) The Financial Institution shall not make, be required to make, or be liable in any manner for its failure to make, any determination under any other agreement between the Debtor, the Collateral Trustee and DOE, including any determination as to whether any party thereto has complied with the terms of such agreement or is entitled to payment or to exercise any other right or remedy thereunder.

3.2 Adverse Claims. Except for the claims and interest of the Collateral Trustee and of the Debtor in the Blocked Account, the Financial Institution has not received notice of any liens, claims or encumbrances relating to the Blocked Account or any financial assets credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Blocked Account or any financial assets credited thereto, the Financial Institution will promptly notify the Collateral Trustee and the Debtor thereof.

ARTICLE IV
MAINTENANCE OF BLOCKED ACCOUNT

In addition to, and not in lieu of, the obligation of the Financial Institution to honor entitlement orders as set forth in Section 1.2 hereof, the Financial Institution agrees to maintain the Blocked Account as follows:

4.1 Sole Control. Subject to Sections 4.4, 4.5, and 5.3, the Financial Institution agrees that it will take all instruction with respect to the Blocked Account solely from the Collateral Trustee.

4.2 Statements and Confirmations.

(a) The Financial Institution will promptly send copies of all notifications described in Article III, account statements and other correspondence concerning the Blocked Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Collateral Trustee at the address for each set forth in Section 5.3 of this Agreement, including monthly statements listing all securities transactions, receipts and disbursements during the applicable month, together with a current listing of all financial assets held in the Blocked Account.

(b) The Debtor and the Collateral Trustee acknowledge that Federal Regulations require the Financial Institution, without charge and within one (1) business day of its receipt of a broker/dealer confirmation for each security transaction in the Blocked Account to forward to the Debtor a written notification which discloses, among other things: the Financial Institution's name, the Debtor's name, the capacity or capacities in which the Financial Institution is acting, the date (and time, within a reasonable period, upon written request of Debtor) of execution, the identity, price,

number of shares or units or principal amount of debt securities purchased or sold by Debtor, the name of the broker/dealer, the amount of any remuneration received by such broker/dealer from the Debtor and the amount of any remuneration received by the Financial Institution. The Debtor agrees that the period statements described in clause (a) above shall satisfy the Financial Institution's obligation to provide the written notification under this clause (b); *provided* that, upon request, the Financial Institution will provide to the Debtor (with copies to the Collateral Trustee), within a reasonable time and at the Financial Institution's sole expense, all additional information as may be required by Federal Regulations.

4.3 Tax Reporting. All items of income, gain, expense and loss recognized in the Blocked Account, shall be reported to the Internal Revenue Service (and all state and local taxing authorities, to the extent such state and local reporting is otherwise made by Financial Institution) under the name and taxpayer identification number of the Debtor.

4.4 Withdrawal Requests. If the Debtor requests withdrawal of funds from the Blocked Account, the Financial Institution shall honor such request only if the Financial Institution has received a request substantially in the form attached to this Agreement as Exhibit A which has been signed by a Responsible Officer of the Borrower and has been countersigned by DOE (a "Withdrawal Request"). The parties agree that no securities may be withdrawn from the Blocked Account.

4.5 Transfer Requests. If the Debtor requests transfer of funds from the subaccounts within the Blocked Account into another subaccount within the Blocked Account or into the securities account in the name "ATVM Tesla Initial Debt Service Account" with number [redacted], the Financial Institution shall honor such request only if the Financial Institution has received a request substantially in the form attached to this Agreement as Exhibit B which has been signed by a Responsible Officer of the Borrower (a "Transfer Request"). The parties agree that no securities may be transferred from the Blocked Account.

4.6 Permitted Investments. The Debtor shall direct the Financial Institution with respect to the selection of investments to be made for the Blocked Account; *provided, however*, all investments shall be of a type described on Exhibit D hereto. Unless otherwise instructed by the Collateral Trustee, the Financial Institution shall cause all interest and investment earnings on the Blocked Account to be deposited into the Investment Earnings Subaccount.

ARTICLE V
MISCELLANEOUS

5.1 Limitations of Financial Institution's Liability.

(a) The Debtor and the Collateral Trustee hereby agree that the Financial Institution is released from any and all liabilities to the Debtor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or gross willful misconduct.

(b) The Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's gross negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement. The provisions of this Section 5.1(b) shall survive the termination of this Agreement and the resignation or removal of the Financial Institution.

(c) Should any dispute arise with respect to this Agreement or the Blocked Account, whether such dispute arises between the parties hereto and others, or between the parties hereto themselves, it is understood and agreed that the Financial Institution may petition (by means of an interpleader or any other appropriate measure) any court of competent jurisdiction for instructions with respect to such dispute and the other parties hereto will hold the Financial Institution harmless and indemnify it against all consequences and expenses that may be incurred by the Financial Institution in connection therewith, which indemnity shall survive the termination of this Agreement or the resignation or removal of Financial Institution.

(d) In the administration of its powers and duties hereunder, the Financial Institution may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, including in-house counsel, accountants and other skilled persons to be selected and retained by it. The Financial Institution shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, including in-house counsel.

(e) Anything in this Agreement to the contrary notwithstanding, in no event shall the Financial Institution be liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Financial Institution has been advised of the likelihood of such loss or damage and regardless of the form of action.

5.2 Termination.

(a) The Financial Institution may terminate this Agreement on thirty (30) days' prior written notice to Collateral Trustee and the Debtor. The Collateral Trustee may terminate this Agreement by written notice to the Financial Institution and the Debtor. The Debtor may not terminate this Agreement.

(b) The obligations of the Financial Institution to the Collateral Trustee pursuant to this Agreement shall continue in effect until the security interest of the Collateral Trustee in the Blocked Account has been terminated and the Collateral Trustee has notified the Financial Institution of such termination in writing, countersigned by DOE.

(c) The Collateral Trustee agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Financial Institution upon the request of the Debtor on or after the termination of the Collateral Trustee's security interest in the Blocked Account.

(d) On or within two (2) Business Days (or such longer period as the Collateral Trustee may agree in writing) of the effective date of a termination of this Agreement by the Financial Institution pursuant to Section 5.2(a), the Financial Institution agrees to transfer all funds and property in the Blocked Account, less any amounts then owing to Financial Institution, to such party and account as shall be directed by the Collateral Trustee in writing, countersigned by DOE.

(e) The termination of this Agreement shall not terminate the Blocked Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Blocked Account.

5.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile or electronic transmission shall, upon request of the Collateral Trustee, be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

If to the Debtor:

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Financial Officer
Telephone No.: (650) 701-2690
Facsimile No.: (650) 701-2612
Email Address: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel

Telephone: (650) 413-4000
Facsimile: (650) 701-2620
Email: generalcounseldoe@teslamotors.com

If to the Financial Institution:

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

with a copy to:

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

If to the Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

5.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Debtor may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Financial Institution and the Collateral Trustee. The Financial Institution may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Collateral Trustee, which consent will not be unreasonably withheld or delayed; *provided, however*, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting the Financial Institution. The Collateral Trustee may transfer its rights and duties under this Agreement to (a) a transferee to which, by contract or operation of law, the Collateral Trustee transfers substantially all of its rights and duties under the financing or other arrangements between the Collateral Trustee and the Debtor, or (b) if the Collateral Trustee is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative.

5.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

5.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)). Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Blocked Account Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

PNC BANK, National Association,
as Financial Institution

By: Kurt Rogers

Name: Kurt Rogers
Title: Vice President

EXHIBIT A
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Tesla Motors, Inc.]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Withdrawal Request

Ladies and Gentlemen:

As referenced in the Blocked Account Control Agreement (the "Agreement"), dated as of January 20, 2010 among TESLA MOTORS, INC., as debtor (the "Debtor"), you and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee"), we hereby request withdrawal(s) set forth below from securities account in the name "ATVM Tesla Dedicated Account" number [redacted] (the "Blocked Account"), to be apportioned as set forth herein.

The aggregate requested withdrawal from the Blocked Account is $[_____] (the "Aggregate Withdrawal Amount").

A. The portion of the Aggregate Withdrawal Amount which relates to Project P is $[_____] (the "Project P Withdrawal Amount").

1. The portion of the Project P Withdrawal Amount to be withdrawn from the Equity Proceeds Subaccount is $[_____], and

2. The portion of the Project P Withdrawal Amount to be withdrawn from the Project P Interim True-Up Subaccount is $[_____].

3. The portion of the Project P Withdrawal Amount to be withdrawn from the Project P Designated Overrun Subaccount is $[_____].

B. The portion of the Aggregate Withdrawal Amount which relates to Project S is $[_____] (the "Project S Withdrawal Amount").

1. The portion of the Project S Withdrawal Amount to be withdrawn from the Equity Proceeds Subaccount is $[_____], and

2. The portion of the Project S Withdrawal Amount to be withdrawn from the Project S Interim True-Up Subaccount is $[_____].

3. The portion of the Project S Withdrawal Amount to be withdrawn from the Project S Designated Overrun Subaccount is $[_____].

C. The portion of the Aggregate Withdrawal Amount to be withdrawn from the Investment Earnings Subaccount is $[_____].

D. The portion of the Aggregate Withdrawal Amount which relates to earnings or dividends with respect to the funds in the Blocked Account to be withdrawn and paid to the Debtor is $[_____].

The authorizations set forth herein shall not be deemed to authorize you to accept any direction or entitlement orders with respect to the Blocked Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to the Collateral Trustee in accordance with the notice provisions set forth in Section 5.3 of the Agreement.

The authorization set forth in this Withdrawal Request shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

[no further text on this page; signatures follow]

Very truly yours,

TESLA MOTORS, INC.,
as Debtor

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Midland Loan Services, Inc.

EXHIBIT B
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Tesla Motors, Inc.]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Transfer Request

Ladies and Gentlemen:

As referenced in the Blocked Account Control Agreement (the "Agreement"), dated as of January 20, 2010 among TESLA MOTORS, INC., as debtor (the "Debtor"), you and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee"), we hereby request the transfer(s) of funds from the applicable subaccount(s) within securities account in the name "ATVM Tesla Dedicated Account" with number [redacted] (the "Blocked Account") into the [other subaccounts within the Blocked Account][the securities account in the name

"ATVM Tesla Initial Debt Service Account" with number [redacted][1] as set forth below.

[INSERT FOR TRANSFERS IN CONNECTION WITH AN EXCESS COST OVERRUN CURE]

A. Transfers to Project P Designated Overrun Subaccount.

1. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Project P Designated Overrun Subaccount.

2. A transfer in the amount of $[_____] to be made from the Project P Interim True-Up Subaccount to the Project P Designated Overrun Subaccount.

B. Transfers to Project S Designated Overrun Subaccount.

1. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Project S Designated Overrun Subaccount.

2. A transfer in the amount of $[_____] to be made from the Project S Interim True-Up Subaccount to the Project S Designated Overrun Subaccount.

[INSERT FOR TRANSFERS IN CONNECTION WITH FINAL COMPLETION OF BOTH PROJECTS]

A. A transfer in the amount of $[_____] to be made from the Equity Proceeds Subaccount to the Initial Debt Service Account.

[INSERT THE BELOW FOR ALL REQUESTS]

The authorizations set forth herein shall not be deemed to authorize you to accept any direction or entitlement orders with respect to the Blocked Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to the Collateral Trustee in accordance with the notice provisions set forth in Section 5.3 of the Agreement.

[no further text on this page; signatures follow]

[1] Use the second alternative only for transfers into the Initial Debt Service Account.

Very truly yours,

TESLA MOTORS, INC.,
as Debtor

By: _____
Name:
Title:

cc: Midland Loan Services, Inc.

EXHIBIT C
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Termination of Blocked Account Control Agreement

You are hereby notified that the Blocked Account Control Agreement, dated as of January 20, 2010 among TESLA MOTORS, INC. (the "Debtor"), you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous entitlement orders to you, you are hereby instructed to accept all future directions with respect to account in the name "ATVM Tesla Dedicated Account" with number [redacted] from the Debtor.

This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to the Debtor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to the Debtor in accordance with the notice provisions set forth in Section 5.3 of the Blocked Account Control Agreement.

The authorization set forth in this Termination Notice shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

Very truly yours,

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Tesla Motors, Inc.

EXHIBIT D
TO BLOCKED ACCOUNT CONTROL AGREEMENT

INVESTMENTS PERMITTED IN CONNECTION WITH SECTION 4.6

Any of the following:

(i) (x) marketable securities that are direct obligations of the United States (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) or obligations the timely payment of principal and interest of which is fully guaranteed by the United States, in each case maturing not more than ninety (90) days from the date of the acquisition thereof by (or on behalf of) the Debtor, or (y) marketable securities that are obligations issued by, or the timely payment of principal and interest is fully guaranteed by, any agency or instrumentality of the United States, the obligations of which are backed by the full faith and credit of the United States, in each case maturing not more than 360 days from the date of acquisition thereof by (or on behalf of) the Debtor; *provided* that with respect to any single agency or instrumentality, the investments permitted under clause (i)(y) shall at no time exceed 5% of the Blocked Account;

(ii) shares of any money market mutual fund that (x) has at least ninety-five percent (95%) of its assets invested continuously in obligations of the type described in clause (i), (y) has net assets of not less than $500,000,000 and (z) has the highest rating obtainable from S&P and Moody's;

(iii) fully collateralized repurchase agreements with a term of not more than thirty (30) days for obligations of the type described in clause (i) above and entered into with a financial institution satisfying the criteria described in clause (iv) below;

(iv) for an investment period of no longer than thirty (30) days, demand deposits of any commercial bank that (x) is organized under the laws of the United States or any State thereof, (y) is subject to supervision and examination by federal or state banking authorities and (z) has the highest rating obtainable from S&P and Moody's; and

(v) the Fidelity Funds, Government Fund, class three shares, CUSIP: 316175603.

BLOCKED ACCOUNT CONTROL AGREEMENT
(Initial Debt Service Account)

This Blocked Account Control Agreement, dated as of January 20, 2010 (this "Agreement") among TESLA MOTORS, INC., a Delaware corporation (the "Debtor"), PNC BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as a "securities intermediary" as defined in Section 8-102 of the UCC (in such capacity, the "Financial Institution"), and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among the Debtor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy ("DOE") and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
THE BLOCKED ACCOUNT

1.1 Establishment of Blocked Account. The Financial Institution hereby confirms and agrees that:

(a) the Financial Institution has established account number [redacted] in the name "ATVM Tesla Initial Debt Service Account" (such account and any successor account, the "Blocked Account");

(b) the Financial Institution shall not change the name or account number of the Blocked Account without prompt written notice to the Collateral Trustee;

(c) all funds and securities underlying any financial assets credited to the Blocked Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to the Blocked Account be registered in the name of the Debtor, payable to the order of the Debtor or specially indorsed to the Debtor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank;

(d) All funds and securities delivered to the Financial Institution by the Debtor will be promptly credited to the Blocked Account; and

(e) the Blocked Account is a "securities account" within the meaning of Section 8-501 of the UCC.

1.2 Control of the Blocked Account. Subject to Section 5.3, if the Financial Institution shall receive any entitlement orders originated by the Collateral Trustee directing the disposition of funds or transfer or redemption of any financial asset relating to the Blocked Account, the Financial Institution shall comply with such entitlement orders without further consent by the Debtor or any other person. The Financial Institution hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Blocked Account and

hereby acknowledges and consents to such lien. If the Debtor is otherwise entitled to issue entitlement orders and such entitlement orders conflict with any entitlement orders issued by the Collateral Trustee, the Financial Institution shall follow the entitlement orders issued by the Collateral Trustee.

1.3 "Financial Assets" Election. The Financial Institution hereby agrees that each item of property (including, without limitation, any financial asset, security, instrument or cash) credited to the Blocked Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

ARTICLE II
SUBORDINATION AND WAIVER

2.1 Subordination of Lien; Waiver of Set-Off. In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in the Blocked Account or any financial assets credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Trustee. The Financial Assets credited to the Blocked Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Collateral Trustee (except that the Financial Institution may set off (i) all unpaid amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the Blocked Account and (ii) the face amount of any checks which have been credited to such Blocked Account but are subsequently returned unpaid because of uncollected or insufficient funds).

ARTICLE III
CONFLICTS AND ADVERSE CLAIMS

3.1 Conflict with Other Agreements.

(a) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail.

(b) The Financial Institution hereby confirms and agrees that:

(i) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Blocked Account and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders originated by such persons; and

(ii) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with the Debtor or the Collateral Trustee purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders as set forth in this Agreement.

(c) The Financial Institution shall not make, be required to make, or be liable in any manner for its failure to make, any determination under any other agreement between the Debtor, the Collateral Trustee and DOE, including any determination as to whether any party thereto has complied with the terms of such agreement or is entitled to payment or to exercise any other right or remedy thereunder.

3.2 Adverse Claims. Except for the claims and interest of the Collateral Trustee and of the Debtor in the Blocked Account, the Financial Institution has not received notice of any liens, claims or encumbrances relating to the Blocked Account or any financial assets credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Blocked Account or any financial assets credited thereto, the Financial Institution will promptly notify the Collateral Trustee and the Debtor thereof.

ARTICLE IV
MAINTENANCE OF BLOCKED ACCOUNT

In addition to, and not in lieu of, the obligation of the Financial Institution to honor entitlement orders as set forth in Section 1.2 hereof, the Financial Institution agrees to maintain the Blocked Account as follows:

4.1 Sole Control. Subject to Sections 4.4 and 5.3, the Financial Institution agrees that it will take all instruction with respect to the Blocked Account solely from the Collateral Trustee.

4.2 Statements and Confirmations.

(a) The Financial Institution will promptly send copies of all notifications described in Article III, account statements and other correspondence concerning the Blocked Account and/or any financial assets credited thereto simultaneously to each of the Debtor and the Collateral Trustee at the address for each set forth in Section 5.3 of this Agreement, including monthly statements listing all securities transactions, receipts and disbursements during the applicable month, together with a current listing of all financial assets held in the Blocked Account.

(b) The Debtor and the Collateral Trustee acknowledge that Federal Regulations require the Financial Institution, without charge and within one (1) business day of its receipt of a broker/dealer confirmation for each security transaction in the Blocked Account to forward to the Debtor a written notification which discloses, among other things: the Financial Institution's name, the Debtor's name, the capacity or capacities in which the Financial Institution is acting, the date (and time, within a reasonable period, upon written request of Debtor) of execution, the identity, price, number of shares or units or principal amount of debt securities purchased or sold by Debtor, the name of the broker/dealer, the amount of any remuneration received by such broker/dealer from the Debtor and the amount of any remuneration received by the Financial Institution. The Debtor agrees that the period statements described in clause (a) above shall satisfy the Financial Institution's obligation to provide the written notification

under this clause (b); provided that, upon request, the Financial Institution will provide to the Debtor (with copies to the Collateral Trustee), within a reasonable time and at the Financial Institution's sole expense, all additional information as may be required by Federal Regulations.

4.3 Tax Reporting. All items of income, gain, expense and loss recognized in the Blocked Account, shall be reported to the Internal Revenue Service (and all state and local taxing authorities, to the extent such state and local reporting is otherwise made by Financial Institution) under the name and taxpayer identification number of the Debtor.

4.4 Withdrawal Requests. If the Debtor requests withdrawal of funds from the Blocked Account, the Financial Institution shall honor such request only if the Financial Institution has received a request substantially in the form attached to this Agreement as Exhibit A which has been signed by a Responsible Officer of the Borrower and has been countersigned by DOE (a "Withdrawal Request"). The parties agree that no securities may be withdrawn from the Blocked Account.

4.5 [Intentionally Omitted.]

4.6 Permitted Investments. The Debtor shall direct the Financial Institution with respect to the selection of investments to be made for the Blocked Account; *provided, however*, all investments shall be of a type described on Exhibit D hereto.

ARTICLE V
MISCELLANEOUS

5.1 Limitations of Financial Institution's Liability.

(a) The Debtor and the Collateral Trustee hereby agree that the Financial Institution is released from any and all liabilities to the Debtor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or gross willful misconduct.

(b) The Debtor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's gross negligence or willful misconduct, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement. The provisions of this Section 5.1(b) shall survive the termination of this Agreement and the resignation or removal of the Financial Institution.

(c) Should any dispute arise with respect to this Agreement or the Blocked Account, whether such dispute arises between the parties hereto and others, or between the parties hereto themselves, it is understood and agreed that the Financial Institution may petition (by means of an interpleader or any other appropriate measure)

any court of competent jurisdiction for instructions with respect to such dispute and the other parties hereto will hold the Financial Institution harmless and indemnify it against all consequences and expenses that may be incurred by the Financial Institution in connection therewith, which indemnity shall survive the termination of this Agreement or the resignation or removal of Financial Institution.

(d) In the administration of its powers and duties hereunder, the Financial Institution may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, including in-house counsel, accountants and other skilled persons to be selected and retained by it. The Financial Institution shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, including in-house counsel.

(e) Anything in this Agreement to the contrary notwithstanding, in no event shall the Financial Institution be liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Financial Institution has been advised of the likelihood of such loss or damage and regardless of the form of action.

5.2 Termination.

(a) The Financial Institution may terminate this Agreement on thirty (30) days' prior written notice to Collateral Trustee and the Debtor. The Collateral Trustee may terminate this Agreement by written notice to the Financial Institution and the Debtor. The Debtor may not terminate this Agreement.

(b) The obligations of the Financial Institution to the Collateral Trustee pursuant to this Agreement shall continue in effect until the security interest of the Collateral Trustee in the Blocked Account has been terminated and the Collateral Trustee has notified the Financial Institution of such termination in writing, countersigned by DOE.

(c) The Collateral Trustee agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Financial Institution upon the request of the Debtor on or after the termination of the Collateral Trustee's security interest in the Blocked Account.

(d) On or within two (2) Business Days (or such longer period as the Collateral Trustee may agree in writing) of the effective date of a termination of this Agreement by the Financial Institution pursuant to Section 5.2(a), the Financial Institution agrees to transfer all funds and property in the Blocked Account, less any amounts then owing to Financial Institution, to such party and account as shall be directed by the Collateral Trustee in writing, countersigned by DOE.

(e) The termination of this Agreement shall not terminate the Blocked Account or alter the obligations of the Financial Institution to the Debtor pursuant to any other agreement with respect to the Blocked Account.

5.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile or electronic transmission shall, upon request of the Collateral Trustee, be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

If to the Debtor:

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: Chief Financial Officer
Telephone No.: (650) 701-2690
Facsimile No.: (650) 701-2612
Email Address: deepak@teslamotors.com

with a copy to (which copy shall not constitute notice):

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attention: General Counsel
Telephone: (650) 413-4000
Facsimile: (650) 701-2620
Email: generalcounseldoe@teslamotors.com

If to the Financial Institution:

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311

Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

with a copy to:

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

If to the Collateral Trustee:

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

with a copy to (which copy shall not constitute notice):

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: General Counsel
Telephone: (913) 253-9000
Facsimile: (913) 253-9709

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

5.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Debtor may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Financial Institution and the Collateral Trustee. The Financial Institution may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the Collateral Trustee, which consent will not be unreasonably withheld or delayed; *provided, however*, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting the Financial Institution. The Collateral Trustee

may transfer its rights and duties under this Agreement to (a) a transferee to which, by contract or operation of law, the Collateral Trustee transfers substantially all of its rights and duties under the financing or other arrangements between the Collateral Trustee and the Debtor, or (b) if the Collateral Trustee is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative.

5.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

5.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)). Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

[no further text on this page; signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Blocked Account Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President

PNC BANK, National Association,
as Financial Institution

By: _____
Name: Kurt Rogers
Title: Vice President

EXHIBIT A
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Tesla Motors, Inc.]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Withdrawal Request

Ladies and Gentlemen:

As referenced in the Blocked Account Control Agreement (the "Agreement"), dated as of January 20, 2010 among TESLA MOTORS, INC., as debtor (the "Debtor"), you and MIDLAND LOAN SERVICES, INC., a Delaware corporation, as collateral trustee (the "Collateral Trustee"), we hereby request withdrawal(s) set forth below from securities account in the name "ATVM Tesla Initial Debt Service Account" number [redacted] (the "Blocked Account"), to be apportioned as set forth herein.

The aggregate requested withdrawal from the Blocked Account is $[_____] (the "Aggregate Withdrawal Amount").

A. The portion of the Aggregate Withdrawal Amount which relates to Note P is $[_____] (the "Project P Withdrawal Amount").

1. The portion of the Project P Withdrawal Amount which relates to the Note Installment due with respect to Note P on [March][June] 15, 2013 (the "Applicable Initial Debt Service Payment Date") is $[_____].

2. The portion of the Project P Withdrawal Amount which relates to interest due and payable on Note P on the Applicable Initial Debt Service Payment Date is $[_____].

B. The portion of the Aggregate Withdrawal Amount which relates to Note S is $[_____] (the "Project S Withdrawal Amount").

1. The portion of the Project S Withdrawal Amount which relates to the Note Installment due with respect to Note S on the Applicable Initial Debt Service Payment Date is $[_____].

2. The portion of the Project S Withdrawal Amount which relates to interest due and payable on Note S on the Applicable Initial Debt Service Payment Date is $[_____].

All amounts withdrawn from the Initial Debt Service Account under Sections A and B above shall be paid directly to the account of the Federal Financing Bank as set forth below:

_____
_____
_____

C. The portion of the Aggregate Withdrawal Amount which relates to earnings or dividends with respect to the funds and securities in the Blocked Account to be withdrawn and paid to the Debtor is $[_____].

The authorizations set forth herein shall not be deemed to authorize you to accept any direction or entitlement orders with respect to the Blocked Account or the financial assets credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to the Collateral Trustee in accordance with the notice provisions set forth in Section 5.3 of the Agreement.

The authorization set forth in this Withdrawal Request shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

[no further text on this page; signatures follow]

EXHIBIT A-3

Very truly yours,

TESLA MOTORS, INC.,
as Debtor

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Midland Loan Services, Inc.

EXHIBIT C
TO BLOCKED ACCOUNT CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

PNC Bank, National Association
800 Connecticut Avenue, NW
4th Floor
Washington, DC 20006
Attention: Kent Rogers
Telephone: (202) 835-4311
Facsimile: (202) 835-5193
Email: kent.rogers@pnc.com

and

PNC Bank, National Association
620 Liberty Avenue, 7th Floor
Pittsburgh, PA 15222
Attention: Chris Reiser
Telephone: (412) 762-9975
Facsimile: (412) 762-7034
Email: Christopher.reiser@pnc.com

Re: Termination of Blocked Account Control Agreement

You are hereby notified that the Blocked Account Control Agreement, dated as of January 20, 2010 among TESLA MOTORS, INC. (the "Debtor"), you and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous entitlement orders to you, you are hereby instructed to accept all future directions with respect to account in the name "ATVM Tesla Initial Debt Service Account" with number [redacted] from the Debtor. This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to the Debtor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to the Debtor in accordance with the notice provisions set forth in Section 5.3 of the Blocked Account Control Agreement.

The authorization set forth in this Termination Notice shall not be effective unless the countersignature of the United States Department of Energy is set forth below.

Very truly yours,

MIDLAND LOAN SERVICES, INC.
as Collateral Trustee

By: _____
Name:
Title:

Approved:

UNITED STATES DEPARTMENT OF ENERGY

By: _____
Name:
Title:
Date:

cc: Tesla Motors, Inc.

EXHIBIT D
TO BLOCKED ACCOUNT CONTROL AGREEMENT

INVESTMENTS PERMITTED IN CONNECTION WITH SECTION 4.6

Any of the following:

(i) (x) marketable securities that are direct obligations of the United States (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) or obligations the timely payment of principal and interest of which is fully guaranteed by the United States, in each case maturing not more than ninety (90) days from the date of the acquisition thereof by (or on behalf of) the Debtor, or (y) marketable securities that are obligations issued by, or the timely payment of principal and interest is fully guaranteed by, any agency or instrumentality of the United States, the obligations of which are backed by the full faith and credit of the United States, in each case maturing not more than 360 days from the date of acquisition thereof by (or on behalf of) the Debtor; *provided* that with respect to any single agency or instrumentality, the investments permitted under clause (i)(y) shall at no time exceed 5% of the Blocked Account;

(ii) shares of any money market mutual fund that (x) has at least ninety-five percent (95%) of its assets invested continuously in obligations of the type described in clause (i), (y) has net assets of not less than $500,000,000 and (z) has the highest rating obtainable from S&P and Moody's;

(iii) fully collateralized repurchase agreements with a term of not more than thirty (30) days for obligations of the type described in clause (i) above and entered into with a financial institution satisfying the criteria described in clause (iv) below;

(iv) for an investment period of no longer than thirty (30) days, demand deposits of any commercial bank that (x) is organized under the laws of the United States or any State thereof, (y) is subject to supervision and examination by federal or state banking authorities and (z) has the highest rating obtainable from S&P and Moody's; and

(v) the Fidelity Funds, Government Fund, class three shares, CUSIP: 316175603.

PNC BANK

January 20, 2010

Director
Advanced Technology Vehicles Manufacturing Loan Program
CF-1.4
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Email: teslaatvmtransaction@hq.doe.gov

Office of the General Counsel
GC-1
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Email: teslaatvmtransaction@hq.doe.gov

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Attention: General Counsel

Re: Tesla Motors, Inc. Blocked Account Information

Ladies and Gentlemen:

Below please find the account names and PNC Bank, National Association ("PNC Bank") account numbers for the accounts of Tesla Motors, Inc. (the "Debtor") subject to the below listed Blocked Account Control Agreements:

1. Initial Debt Service Account: The account named "ATVM Tesla Initial Debt Service Account" bearing account number [redacted] is subject to that certain Blocked Account Control Agreement (Initial Debt Service Account), dated as of January, 2010 among the Debtor, PNC Bank and Midland Loan Services Inc., in its capacity as collateral trustee for the benefit of the United States Department of Energy ("DOE") and the other secured parties referred to therein (the "Collateral Trustee").

2. Dedicated Account: The account named "ATVM Tesla Dedicated Account" bearing account number [redacted] is subject to that certain Blocked Account Control Agreement (Dedicated Account), dated as of January 20, 2010 among the Debtor, PNC Bank, and the Collateral Trustee (the "Dedicated Account Control Agreement"). As contemplated by Section 1 of the Dedicated Account Control Agreement, the ATVM Tesla Dedicated Account contains the following subaccounts, each of which is also subject to the Dedicated Account Control Agreement and is included within the defined term "Blocked Account" for all purposes of the Dedicated Account Control Agreement:

[redacted]

Very truly yours,

PNC BANK, National Association

By: _____
Name: Kent Rogers
Title: Vice President and Trust Officer

Acknowledged and Agreed:

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

DEPOSIT ACCOUNT CONTROL AGREEMENT

CITY NATIONAL BANK
The way up.

This Deposit Account Control Agreement (this "Agreement") is entered into as of January 20, 2010, by and among **Tesla Motors, Inc.**, a Delaware corporation ("Client"), Midland Loan Services, Inc. collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust agreement dated as of January 20, 2010 among Client, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein, and **City National Bank,** a national banking association ("CNB").

RECITALS

A. In order to secure certain obligations of Client to Collateral Trustee, Client has granted Collateral Trustee a security interest in deposit account numbers [redacted] ("Accounts") and any renewals, replacements or rollovers thereof (regardless of the number of such account(s) or the office(s) at which such accounts are maintained), all funds heretofore or hereafter deposited into such account(s), any proceeds thereof (including without limitation any interest earned thereon), and any general intangibles and choses in action arising therefrom and related thereto (collectively, the "Account").

B. In connection therewith, Client is requesting that CNB enter into this Agreement in order to perfect Collateral Trustee's security interest in the Account by control.

AGREEMENT

1. **Security Interest**

Pursuant to that certain Pledge and Security Agreement dated as of January 20, 2010, among Client, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein (the "Security Agreement"), Client has granted to Collateral Trustee a security interest in the Account, and CNB hereby acknowledges the security interest in the Account granted by Client to Collateral Trustee. Client hereby ratifies and confirms the security interest it has granted in the Account to Collateral Trustee under the Security Agreement. CNB hereby confirms and agrees that the Account(s) is a "deposit account" within the meaning of Section 9-102 (a) (29) of the Uniform Commercial Code.

2. **Control of Account by Collateral Trustee; Client's Rights in Account**

2.1 Notwithstanding any separate agreement Client may have with CNB, Collateral Trustee shall be entitled, for purposes of this Agreement, at any time to give CNB instructions as to the withdrawal or disposition of funds from time to time credited to the Account, or as to any other matters relating to the Account, all without further consent of Client. CNB shall, and is fully entitled to, rely upon any such instructions from Collateral Trustee even if such instructions are contrary to any instructions or demands that a Client may give to CNB. CNB hereby confirms and agrees that it shall not change the name or account number of the Account without the prior written consent of Collateral Trustee and, prior to the receipt of the Instructions, Client.

2.2 Until CNB has received written instructions from Collateral Trustee to the contrary, Client shall be entitled to present items drawn on or otherwise to withdraw or direct the disposition of funds from the Account.

2.4 Collateral Trustee's power under this Agreement to give CNB instructions as to the withdrawal or disposition of any funds from time to time credited to the Account, as to any other matters relating to the Account, includes, without limitation, the power to give stop payment orders for any items being presented to the Account for payment. Client confirms that CNB shall follow such instructions from Collateral Trustee even if the result of following such instructions from Collateral Trustee is that CNB dishonors items presented for payment from the Account. Client further confirms that CNB will have no liability to Client for the wrongful dishonor of such items in following such instructions from Collateral Trustee.

3. **CNB's Responsibility**

3.1 CNB shall have no duty to inquire or determine whether Client's obligations to Collateral Trustee are in default or whether Collateral Trustee is entitled, under any separate agreement between Collateral Trustee and Client, to give any instructions relating to the Account. CNB shall have no responsibility or liability to Collateral Trustee for complying with any order or instruction, whether oral or written, concerning the Account, except to the extent such compliance would violate (i) the provisions of this Agreement, or (ii) written instructions or orders previously received from Collateral Trustee, but only if CNB had reasonable opportunity to act thereon and only to the extent Collateral Trustee had reasonable losses or liabilities resulting from any failure to comply with instructions. CNB shall not have any liability to Client or Collateral Trustee for losses or liabilities resulting from any failure to comply with instructions relating to the Account or delay in complying with such instructions if the failure or delay is due to circumstances beyond CNB's reasonable control except to the extent of CNB's gross negligence or willful misconduct. Without limiting the foregoing, in no event shall CNB have any liability for indirect, punitive, exemplary or consequential loss or damages, including without limitation lost profits, whether or not any claim for such loss or such damages is based on tort or contract or CNB knew or should have known the likelihood of such damages in any circumstances.

3.2 CNB may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

4. **Priority of Collateral Trustee's Security Interest; Rights Reserved by CNB**

4.1 CNB agrees that all of its present and future rights against the Account are subordinate to Collateral Trustee's security interest therein; provided, however, that Collateral Trustee agrees that nothing herein subordinates or waives, and that CNB expressly reserves, all of its present and future rights (whether described as rights of setoff, banker's lien, chargeback or otherwise, and whether available to CNB under the law or under any other agreement between CNB and Client concerning the Account or otherwise) with respect to (a) items deposited to the Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such item; (b) overdrafts on the Account; (c) automated clearing house entries; (d) claims of breach of the Uniform Commercial Code's transfer or presentment warranties made against CNB in connection with items deposited to the Account; and (e) CNB's usual and customary charges for services rendered in

connection with the Account, to the extent that, in each case, Client has not separately paid or reimbursed CNB therefor.

5. **Statements**

5.1 In addition to the original deposit account statement for the Account which is provided to Client, CNB will send a duplicate statement to Collateral Trustee. Client hereby authorizes CNB to provide any additional information relating to the Account to Collateral Trustee upon Collateral Trustee's request without Client's further consent.

6. **Notice of Adverse Claims; Record of Security Interest**

6.1 CNB represents to Collateral Trustee that CNB has not received notice of any lien, encumbrance or other claim to the Account from any other person and has not entered into, and covenants with Collateral Trustee that it will not enter into, any agreement with any other person by which CNB is obligated to comply with instructions from such other person as to the disposition of funds from the Account or other dealings with the Account. CNB represents to Collateral Trustee that CNB has not entered into, and covenants with Collateral Trustee that, until the termination of this Agreement, CNB will not enter into, any agreement with Client purporting to limit or condition the obligation of CNB to comply with instructions as set forth in this Agreement. CNB will promptly notify Collateral Trustee if any other person claims that it has a property interest in the Account or seeks to enter into a deposit account control agreement or similar agreement with respect to the Account.

6.2 CNB further represents and warrants that it has marked its books and records to indicate Collateral Trustee's security interest in and lien upon the Account.

7. **Tax Reporting.** Any interest relating to the Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Client.

8. **Returned Items.** Client and Collateral Trustee understand and agree that CNB will pay returned items by debiting the Account. Client agrees to pay the amount of any returned item immediately upon demand to the extent that there are not sufficient funds in the Account to cover such amount on the day of the debit. Collateral Trustee agrees that Collateral Trustee will pay any such amount that is not paid in full by Client within ten (10) Business Days after demand on Client by CNB, up to the amount of any proceeds received by Collateral Trustee under this Agreement.

9. **Costs; Indemnity**

9.1 Client will be responsible for CNB's customary charges and for the repayment of any checks, drafts or other orders for the payment of funds deposited into the Account that are returned unpaid for any reason. Collateral Trustee agrees that Collateral Trustee will pay any such amount that is not paid in full by Client within thirty (30) days after demand on Client by CNB, up to the amount of any proceeds received by Collateral Trustee under this Agreement.

9.2 Client will indemnify CNB, its officers, directors, employees, and agents against claims, liabilities and expenses arising out of this Agreement (including all fees and costs incurred by CNB in complying with instructions or requests given hereunder, and including reasonable attorneys' fees and

disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the claims, liabilities or expenses are caused by CNB's gross negligence or willful misconduct.

9.3 Collateral Trustee will indemnify CNB, its officers, directors, employees and agents against claims, liabilities, and expenses arising out of CNB's following of any instruction or request from Collateral Trustee in connection with this Agreement, (including all fees and costs incurred by CNB in complying with such instructions or requests, and including reasonable attorney's fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff) except to the extent the claims, liabilities, or expenses are caused by CNB's gross negligence or willful misconduct.

9.4 Collateral Trustee's and Client's liability under this section is joint and several; provided, however, that Collateral Trustee shall be liable under this section only to the extent that a claim, liability or expense has not been paid by Client within fifteen (15) days after demand therefore by CNB.

10. **Termination; Survival**

10.1 Collateral Trustee may terminate this Agreement by written notice to CNB and Client. CNB may terminate this Agreement on thirty (30) days' prior written notice to Collateral Trustee and Client. Client may not terminate this Agreement except with written consent of Collateral Trustee and on thirty (30) days' prior notice to Collateral Trustee and CNB.

10.2 Those sections entitled "CNB's Responsibility", "Returned Items", and "Costs; Indemnity", will survive termination of this Agreement.

11. **Governing Law.** This Agreement will be governed by the internal law of California, without regard to principles of conflict of laws.

12. **Entire Agreement.** This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. This Agreement will control over any conflicting agreement between CNB and Client.

13. **Amendments.** No amendment of, or waiver of a right under, this Agreement will be binding unless it is in writing and signed by Client, Collateral Trustee and CNB.

14. **Severability.** To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

15. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of CNB, Collateral Trustee and Client and their respective successors and assigns.

16. **Notices.** A notice or other communication to a party under this Agreement will be in writing and will be sent to the party's address set forth below or to such other address as the party may notify the other parties.

Collateral Trustee: Midland Loan Services, Inc.

10851 Mastin, Suite 700
Overland Park, KS 66210
Attn: President

CNB: City National Bank
224 Airport Parkway
San Jose, CA 95110
Attn: Sanford Topham

with copy to: City National Bank, Legal Division
555 S. Flower St.; 18th Floor
Los Angeles, CA 90071
Attention: Deposit Account Control Agreement Unit

Client: Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Attn: Chief Financial Officer

To the extent that CNB is precluded from making demand or giving notice hereunder by reason of the commencement of a bankruptcy or similar proceeding, then such demand or notice shall be deemed to have been made or given at the commencement of such proceeding.

17. **No agency, etc.**

Nothing contained in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between or among Client, Collateral Trustee and CNB.

18. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same agreement.

19. **Waiver of Jury Trial. To the extent not prohibited by applicable law which cannot be waived, each party hereto absolutely, irrevocably and unconditionally waives, and covenants that it will not assert (whether as plaintiff, defendant or otherwise), any right to trial by jury in any forum in respect of any issue, claim, demand, action or cause of action arising out of or based upon this Agreement or the subject matter hereof, in each case whether now existing or hereafter arising or whether in contract or tort or otherwise. Each party hereto acknowledges that it has been informed by the other parties hereto that the provisions of this section constitute a material inducement upon which the other parties have relied, are relying and will rely in entering into this Agreement. The parties hereto may file an original counterpart or a copy of this section with any court as written evidence of the consent of such other party to the waiver of its rights to trial by jury.**

The foregoing is hereby acknowledged and agreed to, effective as of the last of the dates set forth below.

[remainder of page intentionally left blank]

CLIENT:

Tesla Motors, Inc.,

By: _____

Its:. _____

COLLATERAL TRUSTEE:

Midland Loan Services, Inc.

By: Bradley J. Hauger

Its:. Senior Vice President
Servicing Officer

CNB:

City National Bank,

By: Sanford Topham

Its:. Vice President

DEPOSIT ACCOUNT CONTROL AGREEMENT

Executed and Delivered as of January 20, 2010

PARTIES

This Agreement is among the persons signing this Agreement as the "*Secured Party*", the "*Debtor*" and the "*Bank*".

BACKGROUND

The Debtor is the Bank's customer with respect to one or more deposit accounts identified by the account numbers specified below (individually and collectively, as re-numbered and including any funds in the account or accounts, the "*Deposit Account*"). The Debtor has granted the Secured Party a security interest in the Deposit Account. The Debtor is requesting that the Bank enter into this Agreement. The Bank is willing to do so upon the terms contained in this Agreement.

This Agreement includes the General Terms, the Specific Terms and the Exhibit, each as defined or referred to below.

AGREEMENTS

A. GENERAL TERMS. This Agreement is subject to the General Terms for Deposit Account Control Agreement (the "*General Terms*"), attached herewith as Attachment B. The General Terms are incorporated in this Agreement by reference and without modification except as may be provided in Section 10 of the Specific Terms.

B. SPECIFIC TERMS. The following terms (the "*Specific Terms*") complete, supplement or modify the General Terms:

1. Deposit Account *(see "Background" above)*. The following deposit account(s) comprise the Deposit Account: **Account No.** [redacted]

2. Business Day *(see definition of "Business Day" in Section 1 of the General Terms)*:

A day will not be considered as a "Business Day" if commercial banks in **Buffalo, New York** are closed on that day.

3. Outside Time *(see definition of "Outside Time" in Section 1 of the General Terms)*:

The Outside Time is to be based on a period of **one (1) Business Day**.

4. Disposition of less than all or multi-disposition of funds *(see Section 4(a)(ii)(E) of the General Terms)*:

A Disposition Instruction originated by the Secured Party must be for a disposition of all of the funds, and must require that the funds be sent to a single recipient.

5. Reimbursement Claim Period *(see Section 6(b) of the General Terms)*:

The number of days following the termination of the Agreement in which a reimbursement claim must be made against the Secured Party under Section 6(b) of the General Terms is **thirty (30)**.

6. Electronic Records *(see definition of "writing" in Section 1 of the General Terms)*:

Except as expressly set forth herein, the parties do not permit a writing to include an electronic record (other than as may be made by facsimile) and do not permit communications by email. All permitted facsimile transmissions shall be (i) in an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required, and (ii) if requested by the receiving party, promptly followed by delivery of a manually executed original of such certificate, document or other item. If Secured Party shall make a request for verification with respect to a facsimile transmission, the transmitting party shall promptly verify the authenticity of such item.

7. Governing Law *(see Section 13(a) of the General Terms)*:

The jurisdiction whose law governs this Agreement is **the State of New York**.

8. Bank's Jurisdiction for UCC Purposes *(see Section 13(b) of the General Terms)*:

The Bank's jurisdiction for purposes of part 3 of UCC Article 9 is **the State of New York**.

9. Delivery of Executed Copy *(see Part D)*:

The delivery of an executed copy of this Agreement may not be made by a form of electronic transmission other than facsimile. All permitted facsimile transmissions shall be (i) in an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required, and (ii) if requested by the receiving party, promptly followed by delivery of a manually executed original of such certificate, document or other item. If Secured Party shall make a request for verification with respect to such transmission, the transmitting party shall promptly verify the authenticity of such item.

10. Additional Provisions *(see Section 12(b) of the General Terms)*:

The following provisions modify or supplement the General Terms:

(a) Section 5(b)(iv) of the General Terms shall be deemed modified by deleting the word "negotiation," therein .

(b) The second sentence of Section 6(c) of the General Terms shall be deemed modified by adding the phrase "or otherwise" after the phrase "charging the Deposit Account".

(c) Section 7 of the General Terms shall be deemed modified by adding the following at the end thereof: "Bank acknowledges that it has received notice of the security interest of Secured Party in the Deposit Account and hereby acknowledges and consents to such lien. Except for the claims and interest of Secured Party and of Debtor in the Deposit Account, Bank does not know of any liens, claims or encumbrances relating to the Deposit Account or any funds credited thereto."

(d) Section 8 of the General Terms shall be deemed modified by deleting the words: "If the Secured Party so requests" from the lead-in thereto.

(e) The first sentence of Section 9(a) of the General Terms shall be deemed modified by adding the following to the end thereof "without the prior written consent of the Secured Party."

(f) Clause (i) of Section 9(b) of the General Terms shall be deemed modified by inserting the phrase: "to Debtor as requested by Debtor, unless Bank has received the Initial Instructions, then" immediately at the beginning of such clause (i).

(g) Clause (ii) of Section 9(b) of the General Terms shall be deemed modified by inserting the phrase: "to the address of the Debtor for receiving communications under this Agreement, unless Bank has received the Initial Instructions, then" immediately after the phrase "by check mailed" therein.

(f) Section 11 of the General Terms shall be deemed modified by adding the following: "For the avoidance of doubt, the Debtor may not transfer its rights and duties under this agreement without the express written consent of the Secured Party."

(g) The General Terms shall be deemed modified by adding the following thereto: "All interest, if any, relating to the Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Debtor."

C. EXHIBIT. The parties have completed and attach hereto the Exhibit to be used as the form of the Initial Instruction.

D. SINGLE AGREEMENT; COUNTERPARTS. The General Terms, the Specific Terms and the Exhibit shall be read and construed together with the other provisions of this Agreement as a single agreement. Delivery of executed copies of this Agreement may be made by facsimile. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which collectively shall constitute a single agreement. The parties may deliver such counterparts by electronic transmission in accordance with Section B(9) above. Each party hereto agrees to deliver a manually executed original promptly following such electronic transmission.

[remainder of page intentionally left blank]

SIGNATURES

Debtor:

TESLA MOTORS, INC.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer
Address: 1050 Bing Street, San Carlos, CA 94070

Attention: Chief Financial Officer
Telephone Number (for information only): (650) 701-2690
Facsimile Number: (650) 701-2612

Secured Party:

MIDLAND LOAN SERVICES, INC.

Midland Loan Services, Inc., in its capacity as Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties named in the Collateral Trust Agreement, dated as of January __, 2010, among the Debtor, the other grantors from time to time party thereto and the Secured Party, as Collateral Trustee thereunder.

By:_____
Name: Bradley J. Hauger
Title: Senior Vice President
Address: 10851 Mastin, Suite 700, Overland Park, KS 66210

Attention:
Telephone Number (for information only): (913) 253-9000
Facsimile Number: (913) 253-9709

Bank:

HSBC Bank USA, National Association

By: _____
Name:
Title: David Hoots, SVP Commercial Executive

Address for Notice: Legal Paper Processing, One HSBC Center, 12th Floor, Buffalo, NY 14203

Telephone Number (for information only): 716-841-1349
Facsimile Number: 716-841-7651

Exhibit

[LETTERHEAD OF THE SECURED PARTY]

DEPOSIT ACCOUNT CONTROL AGREEMENT

INITIAL INSTRUCTION

[Date]

HSBC Bank USA, National Association
One HSBC Center
Buffalo, NY 14203

Attention: Legal Paper Processing, 12th Floor

Ladies and Gentlemen:

This is the Initial Instruction as defined in the Deposit Account Control Agreement dated January 20, 2010, among you, us and Tesla Motors, Inc. (the "*Debtor*") (as currently in effect, the "*Control Agreement*"). A copy of the Control Agreement as fully executed is attached. Capitalized terms used in this Initial Instruction have the meanings given them in the Control Agreement

This Initial Instruction directs the Bank no longer to comply with the Debtor's Disposition Instructions.

As an included Disposition Instruction, we direct you to send the funds in the Deposit Account to us by the method and at the address indicated below. We recognize that, as a condition to your complying with this Disposition Instruction and to the extent that we have not already done so, we must provide to you evidence reasonably required by you as to the authority of the person giving this Disposition Instruction to act for us. We also recognize that your obligation to comply with this Disposition Instruction is subject to the other provisions of Section 4(a)(ii) of the General Terms.

Funds transfer instructions:

Receiving bank: _____

ABA routing number for domestic wire: _____.

ABA routing number for ACH transaction: _____.

International: Swift Code No. _____.

Reference details: _____.

Very truly yours,

MIDLAND LOAN SERVICES, INC.

By:_____

Title:_____

WELLS FARGO

RESTRICTED ACCOUNT AND SECURITIES ACCOUNT CONTROL AGREEMENT

(Access Restricted after Instructions)

This **Restricted Account and Securities Account Control Agreement** (this "Agreement"), dated as of the date specified on the initial signature page of this Agreement, is entered into by and among **Tesla Motors, Inc.** ("Company"), **Midland Loan Services, Inc.**, in its capacity as Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties named in the Collateral Trust Agreement (hereinafter defined) ("Secured Party") and **Wells Fargo Bank, National Association** ("Bank"), and sets forth the rights of Secured Party and the obligations of Bank with respect to the deposit accounts of Company at Bank identified at the end of this Agreement as the Restricted Accounts (each hereinafter referred to individually as a "Restricted Account" and collectively as the "Restricted Accounts") and each securities account of Company at Bank linked to any Restricted Account by a sweep mechanism, provided that such securities account either (i) bears an account number identical to the linked Restricted Account or (ii) is separately identified by number at the end of this Agreement as a Securities Account (each hereinafter referred to individually as a "Securities Account" and collectively as "Securities Accounts"). As used in this Agreement, the term "Restricted Account" also refers to each "Preferred Option Sweep Account" (each hereinafter an "Offshore Account") maintained by Company with Bank and linked to another Restricted Account by a sweep mechanism. Company and Secured Party understand and acknowledge that each Restricted Account which is an Offshore Account is a subaccount, in the name of Company, of an offshore U.S. Dollar-denominated deposit account of Bank maintained with Bank's Grand Cayman branch, and that any transfer of funds into or out of the Offshore Account, pursuant to Section 4 of this Agreement or otherwise, must pass through the domestic Restricted Account to which the Offshore Account is specifically linked. Each account numerically designated as a Restricted Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for deposit reporting purposes and integrated with the numerically designated Restricted Account by an arrangement in which deposits made through subaccounts are posted only to the designated Restricted Account. The "Collateral Trust Agreement" is that certain Collateral Trust Agreement dated as of January 20, 2010 by and among the Company, the other grantors from time to time party thereto and Secured Party, as Collateral Trustee thereunder.

1. **Secured Party's Interest in Restricted Accounts and Securities Accounts.** Secured Party represents that it is either (i) a lender who has extended credit to Company and has been granted a security interest in the Restricted Accounts and Securities Accounts or (ii) such a lender and/or the agent for a group of such lenders (the "Lenders"). Company hereby confirms, and Bank hereby acknowledges, the security interest granted by Company to Secured Party in all of Company's right, title and interest in and to (i) the Restricted Accounts and all funds now or hereafter on deposit in or payable or withdrawable from the Restricted Accounts (the "Restricted Account Funds"), and (ii) the Securities Accounts and all financial assets, security entitlements, investment property, and other property and the proceeds thereof now or at any time hereafter held in the Securities Accounts (the "Securities Account Assets"). (As used herein, the terms "investment property," "financial asset", "entitlement order" and "security entitlement" shall have the respective meanings set forth in the Uniform Commercial Code of

the state whose law governs this Agreement. The parties hereby expressly agree that all property, including without limitation, cash, certificates of deposit and mutual funds, at any time held in any of the Securities Accounts is to be treated as a "financial asset".) Except as specifically provided otherwise in this Agreement, Company has given Secured Party complete control over the Restricted Accounts, the Restricted Account Funds, the Securities Accounts, and the Securities Account Assets. Company and Secured Party desire to enter into this Agreement to further the arrangements between Secured Party and Company regarding the Restricted Accounts and the Securities Accounts.

2. **Access to Restricted Accounts and Securities Accounts.** Secured Party and Company agree that until Bank receives, and has had a reasonable opportunity to act upon, written instructions from Secured Party directing that Company no longer have access to any Restricted Account Funds or Securities Account Assets (the "Instructions"), Company will be allowed access to the Restricted Account Funds, and access to the Securities Account Assets through redemption of Securities Account Assets and transfer of the proceeds of such redemption in each case to the applicable Restricted Account. After Bank receives the Instructions, (a) Company will no longer be allowed access to the Restricted Account Funds or Securities Account Assets, and (b) Secured Party will have the exclusive right to direct the disposition of all Restricted Account Funds and Securities Account Assets; and Bank agrees to transfer the Restricted Account Funds and Securities Account Assets to Secured Party in accordance with the provisions of Section 4 below, subject to the conditions set forth in this Agreement. Company agrees that the Restricted Account Funds and Securities Account Assets should be paid and/or delivered to Secured Party after Bank receives the Instructions, and hereby irrevocably authorizes Bank to comply with the Instructions even if Company objects in any way to the Instructions.

3. **Balance Reports.** Bank agrees, at the telephone request of Secured Party on any day on which Bank is open to conduct its regular banking business other than a Saturday, Sunday or public holiday (a "Business Day"), to make available to Secured Party a report ("Balance Report") showing the available balance in the Restricted Accounts and Securities Accounts as of the beginning of such Business Day, either on-line or by facsimile transmission, at Bank's option. Company expressly consents to this transmission of information.

4. **Transfers to Secured Party.** Bank agrees that on each Business Day after it receives the Instructions it will transfer to the Secured Party's account specified at the end of this Agreement with the bank specified at the end of this Agreement or (if no account is so specified) to such account as Secured Party specifies in the Instructions (in either case, the "Secured Party Account") the full amount of the available balance in the Restricted Accounts at the beginning of such Business Day, including all Restricted Account Funds and Securities Account Assets in all Offshore Accounts or Securities Accounts linked to the Restricted Accounts. Bank will use the Fedwire system to make each funds transfer unless for any reason the Fedwire system is unavailable, in which case Bank will determine the funds transfer system to be used in making each funds transfer and the means by which each transfer will be made. Bank, Secured Party and Company each agree that Bank will, without further consent of Company, comply with (i) instructions given to Bank by Secured Party directing disposition of funds in the Restricted Accounts, and (ii) entitlement orders originated by Secured Party directing disposition of Securities Account Assets in the Securities Accounts, subject otherwise to the terms of this Agreement and Bank's standard policies, procedures and documentation in effect from time to time governing the type of disposition requested. Except as otherwise required by law, Bank will not agree with any third party to comply with instructions or entitlement orders originated by such third party for disposition of Restricted Account Funds in any of the Restricted Accounts or Securities Account Assets in any of the Securities Accounts.

5. **Returned Items.** Secured Party and Company understand and agree that the face amount ("Returned Item Amount") of each Returned Item will be paid by Bank debiting the Restricted Account into which such Returned Item was originally deposited, without prior notice to Secured Party or Company. As used in this Agreement, the term "Returned Item" means (i) any item deposited to a Restricted Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or the occurrence or timeliness of any drawee's notice of non-payment; (ii) any item subject to a claim against Bank of breach of transfer or presentment warranty under the Uniform Commercial Code (as adopted in the applicable state) or Regulation CC (12 C.F.R. §229), as in effect from time to time; (iii) any automated clearing house ("ACH") entry credited to a Restricted Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or adjustment; (iv) any credit to a Restricted Account from a merchant card transaction, against which a contractual demand for chargeback has been made; and (v) any credit to a Restricted Account made in error. Company agrees to pay all Returned Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Restricted Account to cover the Returned Item Amounts on the day they are to be debited from the Restricted Account. Secured Party agrees to pay all Returned Item Amounts within thirty (30) calendar days after demand, without setoff or counterclaim, to the extent that (i) the Returned Item Amounts are not paid in full by Company within fifteen (15) calendar days after demand on Company by Bank, and (ii) Secured Party has received proceeds from the corresponding Returned Items.

6. **Settlement Items.** Secured Party and Company understand and agree that the face amount ("Settlement Item Amount") of each Settlement Item will be paid by Bank debiting the applicable Restricted Account, without prior notice to Secured Party or Company. As used in this Agreement, the term "Settlement Item" means (i) each check or other payment order drawn on or payable against any controlled disbursement account or other deposit account at any time linked to a Restricted Account by a zero balance account connection (each a "Linked Account"), which Bank cashes or exchanges for a cashier's check or official check over its counters in the ordinary course of business prior to receiving the Instructions and having had a reasonable opportunity to act on them, and which is presented for settlement against the Restricted Account (after having been presented against the Linked Account) after Bank receives the Instructions, (ii) each check or other payment order drawn on or payable against a Restricted Account, which, on the Business Day Bank receives the Instructions, Bank cashes or exchanges for a cashier's check or official check over its counters in the ordinary course of business after Bank's cutoff time for posting, (iii) each ACH credit entry initiated by Bank, as originating depository financial institution, on behalf of Company, as originator, prior to Bank having received the Instructions and having had a reasonable opportunity to act on them, which ACH credit entry settles after Bank receives the Instructions, and (iv) any other payment order drawn on or payable against a Restricted Account, which Bank has paid or funded prior to receiving the Instructions and having had a reasonable opportunity to act on them, and which is first presented for settlement against the Restricted Account in the ordinary course of business after Bank receives the Instructions and has transferred Restricted Account Funds to Secured Party under Section 4 of this Agreement. Company agrees to pay all Settlement Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Restricted Account to cover the Settlement Item Amounts on the day they are to be debited from the Restricted Account. Secured Party agrees to pay all Settlement Item Amounts within thirty (30) calendar days after demand, without setoff or counterclaim, to the extent that (i) the Settlement Item Amounts are not paid in full by Company within fifteen (15) calendar days after demand on Company by Bank, and (ii) Secured Party has received Restricted Account Funds under Section 4 of this Agreement.

7. **Bank Fees.** Company agrees to pay all Bank's fees and charges for the maintenance and administration of the Restricted Accounts and Securities Accounts and for the treasury management and other account services provided with respect to the Restricted Accounts and Securities Accounts (collectively "Bank Fees"), including, but not limited to, the fees for (a) the Balance Reports provided on the Restricted Accounts and Securities Accounts, (b) the funds transfer services received with respect to the Restricted Accounts, (c) Returned Items, (d) funds advanced to cover overdrafts in the Restricted Accounts (but without Bank being in any way obligated to make any such advances), and (e) duplicate bank statements on the Restricted Accounts. The Bank Fees will be paid by Bank debiting one or more of the Restricted Accounts on the Business Day that the Bank Fees are due, without notice to Secured Party or Company. If there are not sufficient funds in the Restricted Accounts to cover fully the Bank Fees on the Business Day they are debited from the Restricted Accounts, such shortfall or the amount of such Bank Fees will be paid by Company sending Bank a check in the amount of such shortfall or such Bank Fees, without setoff or counterclaim, within fifteen (15) calendar days after demand of Bank. After Bank receives the Instructions, Secured Party agrees to pay the Bank Fees within thirty (30) calendar days after demand, without setoff or counterclaim, to the extent such Bank Fees are not paid in full by Company by check within fifteen (15) calendar days after demand on Company by Bank.

8. **Account Documentation.** Secured Party and Company agree that, except as specifically provided in this Agreement, the Restricted Accounts and Securities Accounts will be subject to, and Bank's operation of the Restricted Accounts and Securities Accounts will be in accordance with, the terms and provisions of (i) Bank's Commercial Account Agreement or other deposit account agreement governing the Restricted Accounts and (ii) Bank's Acceptance of Services, Master Agreement for Treasury Management Services, and applicable sweep option Service Description or securities account agreement governing the Offshore Accounts and Securities Accounts (collectively, the "Account Documentation").

9. **Bank Statements.** After Bank receives the Instructions, Bank will, upon receiving a written request from Secured Party, send to Secured Party by United States mail, at the address indicated for Secured Party after its signature to this Agreement, duplicate copies of all bank statements on the Restricted Accounts and Securities Accounts which are sent to Company. Company and/or Secured Party will have thirty (30) calendar days after receipt of a bank statement to notify Bank of an error in such statement. Bank's liability for such errors is limited as provided in the "Limitation of Liability" section of this Agreement.

10. **Partial Subordination of Bank's Rights.** Bank hereby subordinates to the security interest of Secured Party in the Restricted Accounts and Securities Accounts (i) any security interest which Bank may have or acquire in the Restricted Accounts or Securities Accounts, and (ii) any right which Bank may have or acquire to set off or otherwise apply any Restricted Account Funds or Securities Account Assets against the payment of any indebtedness from time to time owing to Bank from Company, except for debits to the Restricted Accounts permitted under this Agreement for the payment of Returned Item Amounts, Settlement Item Amounts or Bank Fees.

11. **Bankruptcy Notice; Effect of Filing.** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company (a "Bankruptcy Notice"), Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency. With respect to any obligation of Secured Party hereunder which requires prior demand upon Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company shall automatically eliminate the necessity of such demand upon Company by Bank, and shall immediately entitle Bank to make demand on

Secured Party with the same effect as if demand had been made upon Company and the time for Company's performance had expired.

12. **Legal Process, Legal Notices and Court Orders.** Bank will comply with any legal process, legal notice or court order it receives if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.

13. **Indemnification for Following Instructions.** Secured Party and Company each agree that, notwithstanding any other provision of this Agreement, Bank will not be liable to Secured Party or Company for any losses, liabilities, damages, claims (including, but not limited to, third party claims), demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees, (collectively, "Losses and Liabilities") suffered or incurred by Secured Party or Company as a result of or in connection with, (a) Bank complying with any binding legal process, legal notice or court order referred to in Section 12 of this Agreement, (b) Bank following any instruction or request of Secured Party, or (c) Bank complying with its obligations under this Agreement. Company will indemnify Bank against any Losses and Liabilities Bank may suffer or incur as a result of or in connection with any of the circumstances referred to in clauses (a) through (c) of this Section 13. To the extent not paid by Company within fifteen (15) calendar days after demand, Secured Party will indemnify Bank against any Losses and Liabilities Bank may suffer or incur as a result of or in connection with any of the circumstances referred to in clause (b) of this Section 13.

14. **No Representations or Warranties of Bank.** Bank agrees to perform its obligations under this Agreement in a manner consistent with the quality provided when Bank performs similar services for its own account. However, Bank will not be responsible for the errors, acts or omissions of others, such as communications carriers, correspondents or clearinghouses through which Bank may perform its obligations under this Agreement or receive or transmit information in performing its obligations under this Agreement. Secured Party and Company also understand that Bank will not be responsible for any loss, liability or delay caused by wars, failures in communications networks, labor disputes, legal constraints, fires, power surges or failures, earthquakes, civil disturbances or other events beyond Bank's control. **BANK MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

15. **Limitation of Liability.** Bank will not be responsible for any Losses and Liabilities due to any cause other than its own negligence, willful misconduct or breach of this Agreement, in which case its liability to Secured Party and Company shall, unless otherwise provided by any law which cannot be varied by contract, be limited to direct money damages in an amount not to exceed ten (10) times all the Bank Fees charged or incurred during the calendar month immediately preceding the calendar month in which such Losses and Liabilities occurred (or, if no Bank Fees were charged or incurred in the preceding month, the Bank Fees charged or incurred in the month in which the Losses and Liabilities occurred). Company will indemnify Bank against all Losses and Liabilities suffered or incurred by Bank as a result of third party claims; provided, however, that to the extent such Losses and Liabilities are directly caused by Bank's negligence or breach of this Agreement such indemnity will only apply to those Losses and Liabilities which exceed the liability limitation specified in the preceding sentence. The limitation of Bank's liability and the indemnification by Company set out above will not be applicable to the extent any Losses and Liabilities of any party to this Agreement are directly caused by Bank's gross negligence or willful misconduct. **IN NO EVENT WILL BANK BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE**

DAMAGES, WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, WHETHER THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO BANK AND REGARDLESS OF THE FORM OF THE CLAIM OR ACTION, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OR ACTION ALLEGING GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FAILURE TO EXERCISE REASONABLE CARE OR FAILURE TO ACT IN GOOD FAITH. Any action against Bank by Company or Secured Party under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.

16. **Termination.** This Agreement may be terminated by Secured Party or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated immediately upon written notice (i) from Bank to Company and Secured Party should Company or Secured Party fail to make any payment when due to Bank from Company or Secured Party under the terms of this Agreement, or (ii) from Secured Party to Bank upon termination or release of Secured Party's security interest in the Restricted Accounts and Securities Accounts. Company's and Secured Party's obligation to report errors in funds transfers and bank statements and to pay Returned Items Amounts, Settlement Item Amounts, and Bank Fees, as well as the indemnifications made, and the limitations on the liability of Bank accepted, by Company and Secured Party under this Agreement will continue after the termination of this Agreement and/or the closure of the Restricted Accounts and/or Securities Accounts with respect to all the circumstances to which they are applicable existing or occurring before such termination or closure, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination or closure will also survive such termination or closure. Upon any termination of this Agreement and the Service or closure of the Restricted Accounts all available balances in the Restricted Accounts (including proceeds from redemption of all Securities Account Assets) on the date of such termination or closure will be transferred to Company as requested by Company, unless Instructions have been given to Bank, then to Secured Party as requested by Secured Party in writing to Bank.

17. **Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement.

18. **Notices.** All notices from one party to another shall be in writing, or be made by telecopier, and shall be delivered to Company, Secured Party and/or Bank at their contact addresses specified after their signatures to this Agreement, or any other address of any party notified to the other parties in writing, and shall be effective upon receipt. Any notice sent by a party to this Agreement to another party shall also be sent to all other parties to this Agreement. Bank is authorized by Company and Secured Party to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Secured Party, (b) Bank reasonably believes that they are so made, and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order. In furtherance of the intentions of the parties hereof, this Agreement shall constitute written notice by Secured Party to Bank and Bank's Grand Cayman branch of Secured Party's security interest in the Restricted Accounts and Securities Accounts.

19. **Successors and Assigns.** Company may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank and Secured

Party, which consent will not be unreasonably withheld or delayed. Secured Party may transfer its rights and duties under this Agreement to (i) a transferee to which, by contract or operation of law, Secured Party transfers substantially all of its rights and duties under the financing or other arrangements between Secured Party and Company, or (ii) if Secured Party is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative; provided that as between Bank and Secured Party, Secured Party will not be released from its obligations under this Agreement unless and until Bank receives any such transferee's binding written agreement to assume all of Secured Party's obligations hereunder. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Secured Party, which consent will not be unreasonably withheld or delayed; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.

20. **Governing Law.** This Agreement shall be governed by and be construed in accordance with the laws of the State of California, without regard to conflict of laws principles. This state shall also be deemed to be Bank's jurisdiction, for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.

21. **Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability and be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction shall not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.

22. **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (e.g. a "pdf" file) shall be effective as delivery of a manually executed counterpart of the Agreement.

23. **Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company, and Bank and Secured Party, with respect to (a) the interest of Secured Party and the Lenders in the Restricted Accounts and Restricted Account Funds, (b) the interest of Secured Party and the Lenders in the Securities Accounts and Securities Account Assets, and (c) Bank's obligations to Secured Party and the Lenders in connection with the Restricted Accounts and Securities Accounts.

24. **Miscellaneous.**

a. Bank hereby confirms and agrees that each Restricted Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code.

b. Bank hereby acknowledges that it has received notice of the security interest of Secured Party in the Restricted Accounts and hereby acknowledges and consents to such lien.

c. Conflict with Other Agreements. (i) With respect to the matters set forth herein, in the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into relating to the subject matter hereof, the terms of this Agreement shall prevail. (ii) Bank hereby confirms and agrees that (A)

it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with any other person relating to the Restricted Accounts and/or any funds credited thereto pursuant to which it has agreed to comply with instructions originated by such persons; and (B) it has not entered into, and until the termination of this Agreement, will not enter into, any agreement with Company or Secured Party purporting to limit or condition the obligation of Bank to comply with entitlement orders as set forth in this Agreement.

d. Adverse Claims. Except for the claims and interest of Secured Party, Bank and Company in the Restricted Accounts, Bank does not know of any liens, claims or encumbrances relating to the Restricted Accounts or any funds credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Restricted Accounts or any funds credited thereto, Bank will use commercially reasonable efforts to promptly notify Secured Party and Company thereof.

e. Tax Reporting. All interest, if any, relating to the Restricted Accounts, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Company.

[SIGNATURE PAGES FOLLOW]

This Agreement has been signed by the duly authorized officers or representatives of Company, Secured Party and Bank on the date specified below.

Date: Jan. 21 **2010**

Restricted Account Number(s): [redacted]

Securities Account Number(s):

Secured Party Account Number:

Bank of Secured Party Account:

Tesla Motors, Inc.

By: Ahuja

Name: **Deepak Ahuja**

Title: **Chief Financial Officer**

Address for Notices:

1050 Bing Street

San Carlos, CA 94070

Attn: Chief Financial Officer

Midland Loan Services, Inc.

By: _____

Name: Bradley J. Heuger

Title: Senior Vice President
Servicing Officer

Address for Notices:

10851 Mastin, Suite 700

Overland Park, KS 66210

Attention: President

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____

Name: **Matt Burke**

Title: **Vice President**

Address for Notices:

400 Hamilton Avenue, Suite 110

Palo Alto, CA 94301

SECURITIES ACCOUNT CONTROL CONSENT AGREEMENT
(Wells Fargo Securities, LLC Safekeeping)

THIS SECURITIES ACCOUNT CONTROL – CONSENT AGREEMENT (the "Agreement") is entered into as of January 20, 2010, by and among TESLA MOTORS, INC. ("Customer"), WELLS FARGO SECURITIES, LLC ("Intermediary"), and MIDLAND LOAN SERVICES, INC., ("Secured Party"), in its capacity as Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties named in the Collateral Trust Agreement dated as of January 20, 2010 by and among the Customer, the guarantors from time to time party thereto and Secured Party.

RECITALS

A. Customer maintains that certain Account no. [redacted], and may now or hereafter maintain sub-accounts thereunder or consolidated therewith (the "Securities Account") with Intermediary pursuant to an agreement between Intermediary and Customer dated as of January 20, 2010 (the "Account Agreement"), and Customer has granted to Secured Party a security interest in the Securities Account and all financial assets and other property now or at any time hereafter held in the Securities Account.

B. Secured Party, Customer and Intermediary have agreed to enter into this Agreement to perfect Secured Party's security interests in the Collateral, as defined below.

C. Secured Party, Customer and Intermediary have agreed that for the purposes of this Agreement, "Collateral" shall mean: (i) the Securities Account; (ii) all securities held therein (the "Securities"); (iii) all replacements or substitutions for, and proceeds of the sale or other disposition of, the Securities, including without limitation, cash proceeds; and (iv) California shall be the jurisdiction of the Intermediary and the Collateral.

NOW, THEREFORE, in consideration of their mutual covenants and promises, the parties agree as follows:

1. **The Securities Account.** Intermediary hereby represents and warrants to Secured Party and Customer that (i) the Securities Account has been established in the name of Customer as recited above, (ii) the Customer Agreement, the security entitlements arising out of the financial assets carried in the Securities Account and any free credit balances are valid and legally binding obligations of Intermediary, and (iii) except for the claims and interest of Secured Party and Customer in the Securities Account, Intermediary does not know of any claim to or interest in the Securities Account or in any financial asset carried therein. Intermediary will treat all property held by it in the Securities Account as financial assets under Article 8 of the Uniform Commercial Code as enacted in the State of California the (UCC).

2. **No Withdrawals After Receipt of Notice of Exclusive Control.** After Intermediary receives a Notice of Exclusive Control (as such term is defined in Section 4 below), notwithstanding the provisions of Section 4 below, Intermediary shall (i) neither accept nor comply with any entitlement order from Customer withdrawing any financial assets from the Securities Account nor deliver any such financial assets to Customer nor pay any free credit balance or other amount owing from Intermediary to Customer with respect to the Securities Account without the specific prior written consent of Secured Party, and (ii) comply with entitlement orders originated by Secured Party concerning the Securities Account without further consent of Customer.

3. **Priority of Lien.** Intermediary hereby acknowledges that it has received notice of the existence of a Pledge and Security Agreement granting a security interest to Secured Party in the Securities Account and recognizes the security interest granted therein to Secured Party by Customer. Intermediary hereby confirms that the Securities Account is a "securities account" within the meaning of Section 8-501 of the UCC and that Intermediary will not advance any

margin or other credit to Customer therein, either directly or by allowing it to trade in instruments such as options and commodities contracts that create similar obligations, nor hypothecate any securities carried in the Securities Account. Intermediary hereby waives and releases all liens, encumbrances, claims and rights of setoff it may have against the Securities Account of any financial asset carried in the Securities Account or any credit balance in the Securities Account and agrees that, except for payment of (i) its customary fees and commission pursuant to the Customer Agreement and (ii) the amount of payment owed to Intermediary for open trade commitments with respect to the Securities Account, Intermediary will not assert any lien, encumbrance, claim or right against the Securities Account or any financial asset carried in the Securities Account or any credit balance in the Collateral, Intermediary has not entered and will not enter into any agreement with any third party with respect to the Securities Account and will not otherwise agree with any third party that Intermediary will comply with entitlement orders concerning the Securities Account originated by such third party without the prior written consent of Secured Party and Customer.

4. **Control**. Except as otherwise provided in Sections 2 and 3 above, Intermediary shall make trades of financial assets held in the Securities Account at the instruction of Customer, or its authorized representatives, and comply with entitlement orders concerning the Securities Account from Customer, or its authorized representatives, until such time as Secured Party delivers a written notice to Intermediary which states that an Event of Default (as such term is defined in the Loan Arrangement and Reimbursement Agreement dated as of January 20, 2010, by and between Customer and the United States Department of Energy) has occurred and is continuing and that Secured Party is thereby exercising exclusive control over the Securities Account. Such notice may be referred to herein as the "Notice of Exclusive Control". After Intermediary receives a Notice of Exclusive Control, it will immediately cease complying with instructions or entitlement orders concerning the Securities Account originated by Customer or its representatives.

5. **Statements, Confirmations and Notices of Adverse Claims**. Intermediary will send copies of all statements concerning the Securities Account simultaneously to each of Customer and Secured Party at the address indicated below the signature of each party. Secured Party may only waive delivery of statements by written notification to Intermediary. If Intermediary acquires knowledge that any person asserts any lien, encumbrance or adverse claim against the Securities Account or in any financial asset carried therein, Intermediary will promptly notify Secured Party and Customer thereof.

6. **Responsibility of Intermediary**. Except for permitting a withdrawal or payment in violation of Section 2 above or advancing margin or other credit to Customer in violation of Section 3 above, Intermediary shall have no responsibility or liability to Secured Party for making trades of financial assets held in the Securities Account at the instruction of Customer, or its authorized representatives, to the extent such instructions are received by Intermediary prior to receipt of a written Notice of Exclusive Control. Intermediary shall have no responsibility or liability to Customer for complying with a Notice of Exclusive Control or complying with entitlement orders concerning the Securities Account originated by Secured Party. Intermediary shall have no duty to investigate or make any determination as to whether an Event of Default exists and shall comply with a Notice of Exclusive Control even if it believes that an Event of Default does not exist. Neither this Agreement nor the Pledge and Security Agreement imposes or creates any obligation or duty of Intermediary other than those expressly set forth herein. The limitation of Intermediary's liability set forth in this Section 6 shall not apply to the extent that any losses and liabilities of any party to this Agreement are caused by the gross negligence or willful misconduct of Securities Intermediary.

7. **Tax Reporting.** All items of income, gain, expense and loss recognized in the Securities Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Customer.

8. **Customer Agreement.** This Agreement supplements the Customer Agreement among the parties hereto. In the event of a conflict between this Agreement and the Customer Agreement, the terms of this Agreement will prevail. Regardless of any provision in the Customer Agreement, the State of California shall be deemed to be the Intermediary's location for the purposes of this Agreement and the perfection and priority of Secured Party's security interest in the Securities Account.

9. **Termination.** The rights and powers granted herein to Secured Party have been granted in order to perfect its security interest in the Securities Account, are powers coupled with an interest and will neither be affected by the death or bankruptcy of Customer nor by the lapse of time. The obligations of the Intermediary under Sections 2, 3, 4 and 5 above shall continue in effect until the security interest of Secured Party in the Securities Account has been terminated pursuant to the terms of the Pledge and Security Agreement and Secured Party has notified Intermediary of such termination in writing. Upon receipt of such notice from the Secured Party, the obligations of Intermediary under Sections 2, 3, 4 and 5 above with respect to the operation and maintenance of the Securities Account after the receipt of such notice shall terminate, Secured Party shall have no further right to originate entitlement orders concerning the Securities Account and Intermediary may take such steps as Customer may request to vest full ownership and control of the Securities Account in Customer, including, but not limited to, removing the name of Secured Party from the Securities Account or transferring all of the financial assets and credit balances in the Securities Account to another securities account in the name of Customer or its designee.

10. **This Agreement.** This Agreement, the schedules and exhibits hereto and the agreements and instructions required to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations. There are no oral conditions precedent to the effectiveness of this Agreement.

11. **Amendments.** No amendment, modification or termination of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by the party to be charged.

12. **Severability.** If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances, other than those to which it is held invalid or unenforceable, shall be construed in all respects if such invalid or unenforceable term or provision were omitted.

13. **Successors and Assigns.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors and assigns, heirs and personal representatives; *provided* that Customer may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Secured Party.

14. **Rules of Construction.** In this Agreement, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender and the word "or" is disjunctive but not exclusive. The captions and section

numbers appearing in this Agreement are inserted as a matter of convenience. They do not define, limit or describe the scope or intent of the provisions of this Agreement.

15. **Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other means and electronic confirmation of error free receipt is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such parties' name at the heading of this Agreement. Any party may change its address for notices in the manner set forth above.

16. **Choice of Law.** The parties hereto agree that certain material events, occurrences and transactions relating to this Agreement bear a reasonable relationship to the State of California. The validity, terms, performance and enforcement of this Agreement shall be governed by those laws of the State of California which are applicable to agreements which are negotiated, executed, delivered and performed in the State of California.

17. **Counterparts.** This Agreement may be executed in any number counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission in unalterable electronic format shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile also shall promptly deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

18. **Indemnification.** Customer and Secured Party agree to indemnify and hold harmless Intermediary, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorneys' fees) arising out of Intermediary's compliance with any instructions from Customer or Secured Party with respect to the Securities Account, except if such claims, liabilities or expenses are caused by Intermediary's gross negligence or willful misconduct.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement as of the date first above written.

CUSTOMER:

TESLA MOTORS, INC.

By:
Its:
Address:
1050 Bing Street
San Carlos, CA 94070
Attn: Chief Financial Officer
Facsimile: (650) 701-2612

SECURITIES ACCOUNT CONTROL CONSENT AGREEMENT
(Wells Fargo Securities, LLC Safekeeping)

SECURED PARTY:

MIDLAND LOAN SERVICES, INC.

By: Bradley J. Hauger
Its: Senior Vice President
Address:
10851 Mastin, Suite 700
Overland Park, KS 66210
Attention: President
Facsimile: _____

INTERMEDIARY:

WELLS FARGO SECURITIES, LLC

By: Sean O'Connell
Its: AVP
Address:
608 2nd Ave S
MAC 9303-054
Minneapolis, MN 55406
Facsimile: (612) 667-6321

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement, dated as of January 20, 2010 among Tesla Motors, Inc., a Delaware corporation (the "Pledgor"), Tesla Motors GmbH, a limited company formed under the laws of Germany (the "Issuer"), and Midland Loan Services, Inc., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Pledgor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
OWNERSHIP AND INSTRUCTIONS

1.1 Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of Sixteen Thousand Two Hundred Fifty (16,250) shares of the Issuer's common stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Trustee and, prior to the Issuer's receipt of a Notice of Sole Control (as defined below), the Pledgor.

1.2 Instructions. If, after receiving a Notice of Sole Control, the Issuer shall receive any instructions originated by the Collateral Trustee relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person. The Issuer hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Pledged Shares and hereby acknowledges and consents to such lien. If the Pledgor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by the Collateral Trustee, the Issuer shall follow the instructions issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Issuer in substantially the form set forth in Exhibit A hereto.

1.3 Voting Rights. Until such time as the Collateral Trustee shall have delivered a Notice of Sole Control to the Issuer, the Pledgor shall have the right to vote the Pledged Shares.

ARTICLE II
ADDITIONAL REPRESENTATIONS AND COVENANTS OF THE ISSUER

The Issuer hereby represents and warrants to and covenants with the Collateral Trustee as follows:

2.1 It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating to the Pledged Shares

pursuant to which it has agreed to comply with instructions issued by such other person; and

2.2 It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Trustee purporting to limit or condition the obligation of the Issuer to comply with instructions as set forth in Section 1.2 hereof.

2.3 Except for the claims and interest of the Collateral Trustee and of the Pledgor in the Pledged Shares, the Issuer does not know of any liens, claims or encumbrances relating to the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Trustee and the Pledgor thereof.

2.4 This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principals (whether enforcement is sought by proceedings in equity or at law).

ARTICLE III
MISCELLANEOUS

3.1 Indemnification of Issuer.

(a) The Pledgor and the Collateral Trustee hereby agree that the Issuer is released from any and all liabilities to the Pledgor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder.

(b) The Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

3.2 Termination. The obligations of the Issuer to the Collateral Trustee pursuant to this Uncertificated Securities Control Agreement shall continue in effect until the security interests of the Collateral Trustee in the Pledged Shares have been terminated and the Collateral Trustee has notified the Issuer of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially

the form of Exhibit B hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Trustee's security interest in the Pledged Shares. The termination of this Uncertificated Securities Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

3.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Pledgor:	Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Facsimile: (913) 253-9709 Email:
Issuer:	c/o Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

3.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

3.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

3.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required or such format as shall be mutually agreed between the parties hereto. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Uncertificated Securities Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja
Title: Chief Financial Officer

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name: Bradley J. Hauger
Title: Senior Vice President
Servicing Officer

[Signature Page to Uncertificated Securities Control Agreement]

TESLA MOTORS GMBH,
as Issuer

By: _____

Name: Deepak Ahuja
Title: Geschaftsfuhrer

[Signature Page to Uncertificated Securities Control Agreement]

EXHIBIT A
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors GmbH
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Uncertificated Securities Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over sixteen thousand two hundred fifty (16,250) shares of the Issuer's common stock (the "Pledged Shares"). You are hereby instructed not to accept any direction or instructions with respect to the Pledged Shares from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

EXHIBIT B
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors GmbH
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement among you, Tesla Motors, Inc. and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Securities Control Agreement) from Tesla Motors, Inc. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to Tesla Motors, Inc. pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.,
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement, dated as of January 20, 2010 among Tesla Motors, Inc., a Delaware corporation (the "Pledgor"), Tesla Motors Taiwan Limited, a limited company formed under the laws of Taiwan (the "Issuer"), and Midland Loan Services, Inc., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Pledgor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
OWNERSHIP AND INSTRUCTIONS

1.1 Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of sixty five percent (65%) of the outstanding shares of the Issuer's common stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Trustee and, prior to the Issuer's receipt of a Notice of Sole Control (as defined below), the Pledgor.

1.2 Instructions. If, after receiving a Notice of Sole Control, the Issuer shall receive any instructions originated by the Collateral Trustee relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person. The Issuer hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Pledged Shares and hereby acknowledges and consents to such lien. If the Pledgor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by the Collateral Trustee, the Issuer shall follow the instructions issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Issuer in substantially the form set forth in Exhibit A hereto.

1.3 Voting Rights. Until such time as the Collateral Trustee shall have delivered a Notice of Sole Control to the Issuer, the Pledgor shall have the right to vote the Pledged Shares.

ARTICLE II
ADDITIONAL REPRESENTATIONS AND COVENANTS OF THE ISSUER

The Issuer hereby represents and warrants to and covenants with the Collateral Trustee as follows:

2.1 It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating to the Pledged Shares

pursuant to which it has agreed to comply with instructions issued by such other person; and

2.2 It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Trustee purporting to limit or condition the obligation of the Issuer to comply with instructions as set forth in Section 1.2 hereof.

2.3 Except for the claims and interest of the Collateral Trustee and of the Pledgor in the Pledged Shares, the Issuer does not know of any liens, claims or encumbrances relating to the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Trustee and the Pledgor thereof.

2.4 This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principals (whether enforcement is sought by proceedings in equity or at law).

ARTICLE III
MISCELLANEOUS

3.1 Indemnification of Issuer.

(a) The Pledgor and the Collateral Trustee hereby agree that the Issuer is released from any and all liabilities to the Pledgor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder.

(b) The Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

3.2 Termination. The obligations of the Issuer to the Collateral Trustee pursuant to this Uncertificated Securities Control Agreement shall continue in effect until the security interests of the Collateral Trustee in the Pledged Shares have been terminated and the Collateral Trustee has notified the Issuer of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially

the form of Exhibit B hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Trustee's security interest in the Pledged Shares. The termination of this Uncertificated Securities Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

3.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Pledgor:	Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Facsimile: (913) 253-9000 Email:
Issuer:	c/o Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

3.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

3.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

3.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required or such format as shall be mutually agreed between the parties hereto. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Uncertificated Securities Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja
Title: Chief Financial Officer

[Signature Page to Uncertificated Securities Control Agreement]

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____

Name: Bradley J. Hauger
Title: Senior Vice President
Servicing Officer

[Signature Page to Uncertificated Securities Control Agreement]

TESLA MOTORS TAIWAN LIMITED,
as Issuer

By: _____

Name: Deepak Ahuja
Title: Director

[Signature Page to Uncertificated Securities Control Agreement]

EXHIBIT A
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors Taiwan Limited
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Uncertificated Securities Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over sixty five percent (65%) of the outstanding shares of the Issuer's common stock (the "Pledged Shares"). You are hereby instructed not to accept any direction or instructions with respect to the Pledged Shares from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

EXHIBIT B
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors Taiwan Limited
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement among you, Tesla Motors, Inc. and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Securities Control Agreement) from Tesla Motors, Inc. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to Tesla Motors, Inc. pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.,
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

UNCERTIFICATED SECURITIES CONTROL AGREEMENT

This Uncertificated Securities Control Agreement, dated as of January 20, 2010 among Tesla Motors, Inc., a Delaware corporation (the "Pledgor"), Tesla Motors S.A.R.L., a limited company formed under the laws of Monaco (the "Issuer"), and Midland Loan Services, Inc., a Delaware corporation, as collateral trustee (in such capacity, the "Collateral Trustee") under the Collateral Trust Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., the Pledgor, the other grantors party thereto and the Collateral Trustee for the benefit of the United States Department of Energy and the other secured parties referred to therein. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

ARTICLE I
OWNERSHIP AND INSTRUCTIONS

1.1 Registered Ownership of Shares. The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of sixty four (64) shares of the Issuer's common stock (the "Pledged Shares") and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Trustee and, prior to the Issuer's receipt of a Notice of Sole Control (as defined below), the Pledgor.

1.2 Instructions. If, after receiving a Notice of Sole Control, the Issuer shall receive any instructions originated by the Collateral Trustee relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person. The Issuer hereby acknowledges that it has received notice of the security interest of the Collateral Trustee in the Pledged Shares and hereby acknowledges and consents to such lien. If the Pledgor is otherwise entitled to issue instructions and such instructions conflict with any instructions issued by the Collateral Trustee, the Issuer shall follow the instructions issued by the Collateral Trustee. "Notice of Sole Control" shall mean a Notice of Sole Control delivered by the Collateral Trustee to the Issuer in substantially the form set forth in Exhibit A hereto.

1.3 Voting Rights. Until such time as the Collateral Trustee shall have delivered a Notice of Sole Control to the Issuer, the Pledgor shall have the right to vote the Pledged Shares.

ARTICLE II
ADDITIONAL REPRESENTATIONS AND COVENANTS OF THE ISSUER

The Issuer hereby represents and warrants to and covenants with the Collateral Trustee as follows:

2.1 It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating to the Pledged Shares

pursuant to which it has agreed to comply with instructions issued by such other person; and

2.2 It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Pledgor or the Collateral Trustee purporting to limit or condition the obligation of the Issuer to comply with instructions as set forth in Section 1.2 hereof.

2.3 Except for the claims and interest of the Collateral Trustee and of the Pledgor in the Pledged Shares, the Issuer does not know of any liens, claims or encumbrances relating to the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Trustee and the Pledgor thereof.

2.4 This Uncertificated Securities Control Agreement is the valid and legally binding obligation of the Issuer, subject only to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principals (whether enforcement is sought by proceedings in equity or at law).

ARTICLE III
MISCELLANEOUS

3.1 Indemnification of Issuer.

(a) The Pledgor and the Collateral Trustee hereby agree that the Issuer is released from any and all liabilities to the Pledgor and the Collateral Trustee arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder.

(b) The Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's gross negligence, willful misconduct or breach of its obligations hereunder, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

3.2 Termination. The obligations of the Issuer to the Collateral Trustee pursuant to this Uncertificated Securities Control Agreement shall continue in effect until the security interests of the Collateral Trustee in the Pledged Shares have been terminated and the Collateral Trustee has notified the Issuer of such termination in writing. The Collateral Trustee agrees to provide Notice of Termination in substantially

the form of Exhibit B hereto to the Issuer upon the request of the Pledgor on or after the termination of the Collateral Trustee's security interest in the Pledged Shares. The termination of this Uncertificated Securities Control Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

3.3 Notices. Except to the extent otherwise required by applicable law, all notices, reports, requests and demands to or upon the respective parties hereto shall not be effective unless given or made in writing (including by facsimile or electronic transmission, which facsimile shall be followed by an executed original of such writing) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when (i) delivered by hand, if signed for by or on behalf of the receiving party, (ii) if delivered by mail, three (3) business days after being deposited in the mail, postage prepaid, (iii) if deposited with an internationally recognized overnight courier service for overnight delivery to the receiving party, one (1) business day after being deposited with such service, (iv) if delivered by facsimile transmission, when receipt thereof has been confirmed by telephone or facsimile by the receiving party, and (v) if transmitted electronically, upon receipt of electronic, telephone or facsimile confirmation of the recipient's receipt thereof, in each case when sent to the relevant party at the number or address set forth with respect to such person below:

Pledgor:	Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com
Collateral Trustee:	Midland Loan Services, Inc. 10851 Mastin, Suite 700 Overland Park, KS 66210 Attention: President Facsimile: (913) 253-9000 Email:
Issuer:	c/o Tesla Motors, Inc. 1050 Bing St., San Carlos, CA 94070 Attention: Chief Financial Officer Telephone: (650) 701-2690 Facsimile: (650) 701-2612 Email: deepak@teslamotors.com

or, as to each party, such other number or address as shall be designated by such party in a written notice to each other party hereto.

3.4 Amendments, etc. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

3.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.6 Governing Law; Waiver Of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.7 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

3.8 Counterparts. This Agreement may be executed in counterparts of the parties hereof, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. The parties may deliver such counterparts by facsimile or electronic transmission in an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required or such format as shall be mutually agreed between the parties hereto. Each party hereto agrees to deliver a manually executed original promptly following such facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Uncertificated Securities Control Agreement to be executed as of the date first above written by their respective officers or any other authorized signatory thereunto duly authorized.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

[Signature Page to Uncertificated Securities Control Agreement]

MIDLAND LOAN SERVICES, INC.,
as Collateral Trustee

By: _____
Name:
Title: **Bradley J. Hauger**
Senior Vice President
Servicing Officer

[Signature Page to Uncertificated Securities Control Agreement]

TESLA MOTORS S.A.R.L.,
as Issuer

By: _____

Name: Simon Rochefort
Title: Gerant (Manager)

[Signature Page to Uncertificated Securities Control Agreement]

EXHIBIT A
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors S.A.R.L.
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Notice of Sole Control

Ladies and Gentlemen:

As referenced in the Uncertificated Securities Control Agreement, dated as of January 20, 2010, among Tesla Motors, Inc., you and the undersigned (a copy of which is attached), we hereby give you notice of our sole control over sixty four (64) shares of the Issuer's common stock (the "Pledged Shares"). You are hereby instructed not to accept any direction or instructions with respect to the Pledged Shares from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

EXHIBIT B
TO UNCERTIFICATED SECURITIES CONTROL AGREEMENT

[Letterhead of Collateral Trustee]

[Date]

Tesla Motors S.A.R.L.
c/o Tesla Motors, Inc.
1050 Bing St., San Carlos, CA 94070

Attention: Chief Financial Officer

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement among you, Tesla Motors, Inc. and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Securities Control Agreement) from Tesla Motors, Inc. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to Tesla Motors, Inc. pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to Tesla Motors, Inc.

Very truly yours,

Midland Loan Services, Inc.,
as Collateral Trustee

By: _____
Name:
Title:

cc: Tesla Motors, Inc.

SHARE CERTIFICATE

Certificate Number	Number of Shares
4	65

Company Name: TESLA MOTORS LIMITED

Company Number: 4384008

This is to Certify that TESLA MOTORS INC

is/~~are~~ the Registered holder(s) of SIXTY FIVE Shares of £1.00 each fully paid

in the above-named company, subject to the Memorandum and Articles of Association of the Company.

**This document is hereby executed by the Company/~~The Common Seal of the Company was hereto affixed~~ in the presence of:*

Director:

*Secretary/Director

Date: 8 December 2009

*Delete as appropriate

NO TRANSFER OF ANY OF THE ABOVE MENTIONED SHARES CAN BE REGISTERED UNTIL THIS CERTIFICATE HAS BEEN DEPOSITED AT THE REGISTERED OFFICE OF THE COMPANY

STOCK POWER

FOR VALUE RECEIVED, and pursuant to that certain Pledge and Security Agreement, dated as of January __, 2010, by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., the undersigned hereby sells, assigns and transfers unto_____ _____ sixty-five (65) Shares of Common Stock of Tesla Motors Limited, a company organized under the laws of the United Kingdom, standing in the undersigned's name on the books of the corporation represented by Certificate No. 4.

The undersigned hereby irrevocably constitutes and appoints_____ _____attorney to transfer said stock on the books of said corporation with full power of substitution in the premises.

Dated:_____

Tesla Motors, Inc.,

a Delaware corporation

By:_____

Name: Deepak Ahuja

Title: Chief Financial Officer

CERT. NO.	CS-1	FROM WHOM TRANSFERRED	
FOR	65 SHARES	TREASURY	
ISSUED TO		Dated	
TESLA MOTORS, INC.		No. Original Cert.	
		No. Original Shares	
DATED	July 15, 2009	No. of Shares Transferred	65

NO. CS-1

INCORPORATED UNDER THE CANADA BUSINESS CORPORATIONS ACT
Subject to the Canada Business Corporations Act

65 Shares

TESLA MOTORS CANADA INC.

This is to Certify that TESLA MOTORS, INC.

is the registered holder of sixty five

Common shares in the capital of

TESLA MOTORS CANADA INC.

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of:

(i) the rights, privileges, restrictions and conditions attached to the shares represented by this certificate and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors; and

(ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

The Corporation has a lien on the shares represented by this Certificate for the indebtedness of the shareholder to the Corporation.

The right of the shareholder to transfer the shares represented by this Certificate is subject to restrictions.

IN WITNESS WHEREOF this Corporation has caused this Certificate to be signed by its duly authorized officers.

DATED this 15th day of July, 2009

President (Elon Musk)

Secretary (Craig Harding)

D&D 202

CERTIFICATE FOR
sixty five
Common shares of

TESLA MOTORS CANADA INC.

Issued to: **TESLA MOTORS, INC.**
Date: **July 15, 2009**
Certificate: **CS-1**

****

For Value I received, I hereby assign and transfer unto

_____

_____ **Common shares**

represented by the within Certificate

DATED _____

In the presence of

_____ _____

STOCK POWER

FOR VALUE RECEIVED, and pursuant to that certain Pledge and Security Agreement, dated as of January __, 2010, by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., the undersigned hereby sells, assigns and transfers unto_____ _____ sixty-five (65) Shares of Common Stock of Tesla Motors Canada Inc., a corporation incorporated under the laws of the Province of Ontario, Canada, standing in the undersigned's name on the books of the corporation represented by Certificate No. CS-1.

The undersigned hereby irrevocably constitutes and appoints_____ _____attorney to transfer said stock on the books of said corporation with full power of substitution in the premises.

Dated:_____

Tesla Motors, Inc.,

a Delaware corporation

By:_____

Name: Deepak Ahuja

Title: Chief Financial Officer

March 27 1992

Incorporated under the laws of the state of California

NUMBER 43

SHARES 2,677

[redacted]

The shares of stock represented by this certificate (and all transfers thereof) are subject to certain restrictions contained in a Shareholders Agreement dated as of December 30, 2005 by and among the shareholders of the Company and the Company, a copy of which is on file at the main office of the Company

This Certifies that Tesla Motors, Inc *is the registered holder of* Two Thousand, Six Hundred Seventy-seven *Shares*

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed

In Witness Whereof, *the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this* 8th *day of* March *A.D. 19* 2006

Secretary

President

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations. Additional abbreviations may also be used though not in the list.

TEN COM	- as tenants in common	UNIF GIFT MIN ACT____ Custodian _____	(Minor)
TEN ENT	- as tenants by entireties	under Uniform Gifts to Minor Act _____	(State)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common		

For value received, the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____ *Shares*

represented by the within Certificate, and hereby irrevocably constitutes and appoints _____

_____ *Attorney to transfer the said shares on the books of the within named Corporation with full power of substitution in the premises.*

Dated _____

In presence of _____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

STOCK POWER

FOR VALUE RECEIVED, and pursuant to that certain Pledge and Security Agreement, dated as of January __, 2010, by Tesla Motors, Inc. in favor of Midland Loan Services, Inc., the undersigned hereby sells, assigns and transfers unto_____ _____ two thousand six hundred seventy-seven (2,677) Shares of Common Stock of AC Propulsion, Inc., a California corporation, standing in the undersigned's name on the books of the corporation represented by Certificate No. 43.

The undersigned hereby irrevocably constitutes and appoints_____ _____attorney to transfer said stock on the books of said corporation with full power of substitution in the premises.

Dated:_____

Tesla Motors, Inc.,

a Delaware corporation

By:_____

Name: Deepak Ahuja

Title: Chief Financial Officer

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [Optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CSC
2711 Centerville Road
Suite 400
Wilmington, DE 19808

DELAWARE DEPARTMENT OF STATE
U.C.C. FILING SECTION
FILED 06:24 PM 01/19/2010
INITIAL FILING # 2010 0187157

SRV: 100051305

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: Tesla Motors, Inc.

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1050 Bing Street	San Carlos	CA	94070	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		Corporation	Delaware	DE 3677166 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Midland Loan Services, Inc., as Collateral Trustee

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10851 Mastin, Suite 700	Overland Park	KS	66210	USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all assets of the Debtor, whether now existing or hereafter arising.

5. ALTERNATIVE DESIGNATION (if applicable) ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

File with DE SOS 255630-1

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

[redacted]

201101 2010 JAN 20 PM 12:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (Optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

CSC 50
DRAW DOWN

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: Tesla Motors New York LLC

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1050 Bing Street	San Carlos	CA	94070	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		Limited Liability Company	New York	☑ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Midland Loan Services, Inc., as Collateral Trustee

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10851 Mastin, Suite 700	Overland Park	KS	66210	USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all assets of the Debtor, whether now existing or hereafter arising.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

File with NY SOS 2556303 Kall

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

FILING NUMBER: 201001200033222

Copy

[redacted]

CONFORMED COPY: This document has been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

Doc#: 20582715
1/20/2010 3:14 PM

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [Optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Corporation Service Company
1180 Avenue of the Americas
Suite 210
New York, NY 10036

LP

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: Tesla Motors, Inc.

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1050 Bing Street	San Carlos	CA	94070	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		Corporation	Delaware	DE 3677166 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Midland Loan Services, Inc., as Collateral Trustee

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10851 Mastin, Suite 700	Overland Park	KS	66210	USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all assets of the Debtor, whether now existing or hereafter arising, affixed to certain real property located in the county of Santa Clara, California. For a legal description of the property, see Exhibit A, attached hereto.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☑ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA
File with the County Clerk of Santa Clara, California

255630-2

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR **Tesla Motors, Inc.**

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME,SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

See attached Exhibit A

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

LexisNexis Document Solutions
801 Adlai Stevenson Drive
Springfield, IL 62703-4261

Exhibit "A"

Legal Description

Real property in the City of Palo Alto, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF PALO ALTO, COUNTY OF SANTA CLARA, BEING A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED MAY 22, 1969, IN BOOK 254 OF PARCEL MAPS AT PAGE 1, OFFICIAL RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF ROAD "B" (70 FEET IN WIDTH) AS SAID ROAD IS SHOWN ON THE AFOREMENTIONED PARCEL MAP, SAID POINT OF BEGINNING BEARING SOUTH 65 DEG. 06' 26" EAST 347.24 FEET FROM THE WESTERLY TERMINUS OF THE COURSE NORTH 65 DEG. 06' 26" WEST 659.31 FEET AS SAID COURSE IS SHOWN ON THE AFOREMENTIONED PARCEL MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHWESTERLY LINE OF THE AFOREMENTIONED ROAD "B" SOUTH 65 DEG. 06' 26" EAST 312.07 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 965 FEET, THROUGH A CENTRAL ANGLE OF 41 DEG. 46' 05", A DISTANCE OF 703.48 FEET; THENCE SOUTH 23 DEG. 20' 20" EAST 148.15 FEET; THENCE LEAVING THE SOUTHWESTERLY LINE OF THE AFOREMENTIONED ROAD "B" SOUTH 66 DEG. 39' 40" WEST 581.37 FEET; THENCE NORTH 23 DEG. 20' 20" WEST 648.61 FEET; THENCE NORTH 65 DEG. 06' 26" WEST 236.00 FEET; THENCE NORTH 24 DEG. 53' 34" EAST 14.76 FEET; THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 20 FEET, THROUGH A CENTRAL ANGLE OF 21 DEG. 40' 04", A DISTANCE OF 7.56 FEET; THENCE ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 110 FEET, THROUGH A CENTRAL ANGLE OF 22 DEG. 50' 07" A DISTANCE OF 43.84 FEET; THENCE ALONG THE ARC OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 305 FEET, THROUGH A CENTRAL ANGLE OF 31 DEG. 51' 09", A DISTANCE OF 169.56 FEET; THENCE ALONG THE ARC OF A REVERSE CURVE TO THE LEFT, HAVING A RADIUS OF 10 FEET, THROUGH A CENTRAL ANGLE OF 31 DEG. 01' 12", A DISTANCE OF 5.41 FEET; THENCE NORTH 24 DEG. 53' 34" EAST 115.06 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF PALO ALTO, COUNTY OF SANTA CLARA, BEING A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED MAY 22, 1969, IN BOOK 254 OF PARCEL MAPS AT PAGE 1, OFFICIAL RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF ROAD "B" (70 FEET IN WIDTH) AS SAID ROAD "B" IS SHOWN ON THE AFORESAID PARCEL MAP, SAID POINT BEARING SOUTH 23 DEG. 20' 20" EAST 148.15 FEET FROM THE NORTHERLY TERMINUS OF THE COURSE NORTH 23 DEG. 20' 20" WEST 440.00 FEET AS SAID COURSE IS SHOWN ON THE AFOREMENTIONED PARCEL MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHWESTERLY LINE OF ROAD "B" SOUTH 23 DEG. 20' 20" EAST 291.85 FEET; THENCE SOUTH 14 DEG. 36' 34" EAST 79.07 FEET; THENCE SOUTH 23 DEG. 20' 20" EAST 85.00 FEET; THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 20 FEET, THROUGH A CENTRAL ANGLE OF 90 DEG. 00', A DISTANCE OF 31.42 FEET TO A POINT ON THE NORTHERLY LINE OF ARASTRADERO ROAD AS SAID ARASTRADERO ROAD IS SHOWN ON THE AFOREMENTIONED PARCEL MAP; THENCE SOUTH 66 DEG. 39' 40" WEST 488.00 FEET; THENCE NORTH 23 DEG. 20' 20" WEST 475.00 FEET; THENCE NORTH 66 DEG. 39' 40" EAST 520.00 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF PALO ALTO, COUNTY OF SANTA CLARA, BEING A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED MAY 22, 1969, IN BOOK 254 OF PARCEL MAPS AT PAGE 1, OFFICIAL RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE AFOREMENTIONED PARCEL A, SAID POINT OF BEGINNING ALSO LYING ON THE SOUTHWESTERLY LINE OF ROAD "B" (70 FEET IN WIDTH) AS SAID ROAD "B" IS SHOWN ON THE AFOREMENTIONED PARCEL MAP; THENCE FROM SAID POINT OF BEGINNING SOUTH 12 DEG. 46' 51" EAST 522.61 FEET; THENCE SOUTH 30 DEG. 41' 41" EAST 1330.33 FEET; THENCE NORTH 66 DEG. 39' 40" EAST 167.44 FEET; THENCE NORTH 23 DEG. 20' 20" WEST 475.00 FEET; THENCE SOUTH 66 DEG. 39' 40" WEST 61.37 FEET; THENCE NORTH 23 DEG. 20' 20" WEST 648.61 FEET; THENCE NORTH 65 DEG. 06' 26" WEST 236.00 FEET; THENCE NORTH 24 DEG. 53' 34" EAST 14.76 FEET; THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 20 FEET, THROUGH A CENTRAL ANGLE OF 21 DEG. 40' 04", A DISTANCE OF 7.56 FEET; THENCE ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 110 FEET, THROUGH A CENTRAL ANGLE OF 22 DEG. 50' 07", A DISTANCE OF 43.84 FEET; THENCE ALONG THE ARC OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 305 FEET, THROUGH A CENTRAL ANGLE OF 31 DEG. 51' 09", A DISTANCE OF 169.56 FEET; THENCE ALONG THE ARC OF A REVERE CURVE TO THE LEFT, HAVING A RADIUS OF 10 FEET, THROUGH A CENTRAL ANGLE OF 31 DEG. 01' 12", A DISTANCE OF 5.41 FEET; THENCE NORTH 24 DEG. 53' 34" EAST 115.06 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF THE AFOREMENTIONED ROAD "B"; THENCE ALONG THE SOUTHWESTERLY LINE OF THE AFOREMENTIONED ROAD "B" NORTH 65 DEG. 06' 26" WEST 347.24 FEET; THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 765 FEET, THROUGH A CENTRAL ANGLE OF 8 DEG. 06' 51, A DISTANCE OF 108.34 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 8, 1985 IN BOOK J515, PAGE 273, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND EIGHTEEN INCHES WIDE LYING NINE INCHES ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE WESTERLY LINE OF LOT 9 AS SAID LOT AND LINE ARE SHOWN ON "TRACT NO. 4781, STANFORD INDUSTRIAL PARK" FILED IN BOOK 261 OF MAPS, AT PAGE 41, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA DISTANT THEREON SOUTH 23 DEG. 20' 20" EAST 4.69 FEET FROM THE SOUTHERLY END OF A CURVE HAVING A RADIUS OF 1035.00 FEET; RUNNING THENCE NORTH 71 DEG. 14' 05" EAST 87.63 FEET; THENCE SOUTH 84 DEG. 59' 46" EAST 19.99 FEET; THENCE SOUTH 89 DEG. 29' 28" EAST 26.44 FEET.

PARCEL FIVE:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 8, 1985 IN BOOK J515, PAGE 291, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING SOUTHEASTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST WESTERLY CORNER OF ASSESSOR'S PARCEL 142-18-9 BEING THAT CERTAIN PARCEL DESCRIBED IN LEASE FROM LELAND STANFORD JUNIOR UNIVERSITY TO DOW JONES AND COMPANY, INC., AND RUNNING THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL NORTH 33 DEG. 05' 37" EAST, 76.35 FEET; THENCE NORTH 33 DEG. 18' 37" EAST, 481.26 FEET; THENCE 31.42

FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 90 DEG. 00' 00".

PARCEL SIX:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 14, 1985 IN BOOK J519, PAGE 1392, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING WESTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF COYOTE HILL TRAIL, 70.00 FEET WIDE, WITH THE WESTERLY LINE OF 10 FOOT SANITARY EASEMENT, RECORDED IN VOLUME 8529, OFFICIAL RECORDS OF SANTA CLARA COUNTY AT PAGE 213; AND RUNNING THENCE ALONG THE SAID WESTERLY LINE OF SAID EASEMENT NORTH 14 DEG. 57' 41" EAST, 423.68 FEET; THENCE NORTH 55 DEG. 02' 13" WEST, 162.54 FEET; THENCE NORTH 33 DEG. 01' 54" EAST, 311.96 FEET; THENCE NORTH 33 DEG. 30' 00" WEST, 210.60 FEET TO THE NORTHERLY LINE OF A 20 FOOT SANITARY SEWER EASEMENT DESCRIBED IN DEED RECORDED IN BOOK 5324, OFFICIAL RECORDS OF SANTA CLARA COUNTY AT PAGE 246; THENCE ALONG SAID LINE NORTH 72 DEG. 44' 07" EAST, 76.20 FEET; THENCE NORTH 55 DEG. 44' 07" EAST, 188.09 FEET TO THE EASTERLY BOUNDARY OF ASSESSORS PARCEL 146-16-72; THENCE ALONG SAID LINE NORTH 5 DEG. 27' 07" EAST, 12.69 FEET TO THE SOUTHERLY LINE OF FOOTHILL BOULEVARD.

PARCEL SEVEN:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 14, 1985 IN BOOK J519, PAGE 1409, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING SOUTHEASTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST NORTHERLY CORNER OF ASSESSOR'S PARCEL 142-18-30 BEING THAT CERTAIN PARCEL DESCRIBED IN LEASE FROM LELAND STANFORD JUNIOR UNIVERSITY TO KAISER AEROSPACE AND ELECTRONICS CORPORATION, AND RUNNING THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH 33 DEG. 18' 37" WEST, 400.86 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL.

PARCEL EIGHT:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 26, 1985 IN BOOK J531, PAGE 1708, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING EASTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST NORTHERLY CORNER OF ASSESSOR'S PARCEL 142-18-22 BEING THAT CERTAIN PARCEL DESCRIBED IN THE LEASE FROM LELAND STANFORD JUNIOR UNIVERSITY TO W.S.J. PROPERTIES; AND RUNNING THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL SOUTH 33 DEG. 03' 37" WEST, 596.45 FEET; THENCE 58.81 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 607.07 FEET THROUGH A CENTRAL ANGLE OF 5 DEG. 33' 03" TO THE MOST WESTERLY CORNER OF SAID PARCEL, BEING A POINT ON THE NORTHERLY LINE OF THE HETCH HETCHY RIGHT-OF-WAY OF THE CITY AND COUNTY OF SAN FRANCISCO, THENCE ALONG SAID LINE SOUTH 47 DEG. 20' 23" EAST, 31.20 FEET; THENCE 652.32 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1075.00 FEET THROUGH A CENTRAL ANGLE OF 34 DEG. 46' 03" TO THE MOST SOUTHERLY CORNER OF SAID PARCEL.

PARCEL NINE:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 26, 1985 IN BOOK J531, PAGE 1725, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING SOUTHEASTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST NORTHERLY CORNER OF ASSESSOR'S PARCEL 142-18-29 BEING THAT CERTAIN PARCEL DESCRIBED IN LEASE FROM LELAND STANFORD JUNIOR UNIVERSITY TO KAISER AEROSPACE AND ELECTRONICS, AND RUNNING THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH 33 DEG. 18' 37" WEST, 380.00 FEET; THENCE 31.42 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 90 DEG. 00' 00".

PARCEL TEN:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED NOVEMBER 26, 1985 IN BOOK J531, PAGE 1742, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING WESTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF LOT 2 WITH THE WESTERLY LINE OF 10 FOOT SANITARY EASEMENT RECORDED IN VOLUME 8529, OFFICIAL RECORDS OF SANTA CLARA COUNTY AT PAGE 213 AS SAID LINES, LOT AND EASEMENT ARE SHOWN ON "TRACT NO. 4781, STANFORD INDUSTRIAL PARK" FILED NOVEMBER 13, 1969 IN BOOK 261 OF MAPS AT PAGES 40 AND 41; AND RUNNING THENCE ALONG THE WESTERLY LINE OF SAID EASEMENT NORTH 00 DEG. 12' 58" EAST 468.11 FEET; THENCE NORTH 19 DEG. 36' 51" EAST, 289.36 FEET; THENCE NORTH 49 DEG. 18' 16" WEST, 262.06 FEET; THENCE NORTH 11 DEG. 45' 29" WEST, 228.33 FEET; THENCE NORTH 8 DEG. 22' 12" EAST, 252.23 FEET TO THE SOUTHERLY LINE OF COYOTE HILL TRAIL, 70.00 FEET WIDE.

PARCEL ELEVEN:

AN EASEMENT FOR COMMUNICATIONS FACILITIES AS CONVEYED IN THAT CERTAIN INSTRUMENT EXECUTED BY THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, IN FAVOR OF HEWLETT-PACKARD COMPANY, A CALIFORNIA CORPORATION, AND RECORDED AUGUST 21, 1986 IN BOOK J815, PAGE 705, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 2.00 FEET WIDE LYING NORTHWESTERLY OF, ADJACENT TO AND CONTIGUOUS WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEAST CORNER OF ASSESSOR'S PARCEL 142-18-33, BEING THAT CERTAIN PARCEL DESCRIBED IN LEASE FROM LELAND STANFORD JUNIOR UNIVERSITY TO LOCKHEED MISSILES AND SPACE COMPANY, INC., AND RUNNING THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL NORTH 33 DEG. 05' 37" EAST, 68.53 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF HETCH HETCHY RIGHT-OF-WAY OF THE CITY AND COUNTY OF SAN FRANCISCO.

APN: 142-16-066

COLLATERAL ACCESS AGREEMENT

THIS COLLATERAL ACCESS AGREEMENT (this "***Agreement***"), dated as of January 20, 2010, by and among The Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California (the "***Landlord***"), the United States of America, acting by and through the United States Department of Energy ("***DOE***"), a department of the United States government (and including, without limitation the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury) (the "***Lender***"), and Tesla Motors, Inc., a Delaware corporation (the "***Company***").

RECITALS

A. WHEREAS, the Landlord is the landlord under that certain Commercial Lease, dated as of August 6, 2009 (the "***Lease***"), between the Landlord and the Company, as tenant. The Lease covers certain premises located in Palo Alto, California more particularly described in the Lease and incorporated herein by this reference (the "***Premises***"). The Landlord is the owner of the indefeasible, fee simple title to the Premises. Any capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Lease.

B. WHEREAS, the Company, intends to become party to a Loan Arrangement and Reimbursement Agreement (the "***Loan Agreement***" and, together with any other document entered into in connection therewith or the transactions contemplated thereby, the "***Loan Documents***") with Lender pursuant to Lender's Advanced Technology Vehicles Manufacturing Incentive Program (the "***ATVM Program***") authorized by section 136 of the Energy Independence and Security Act of 2007, as amended from time to time; and

C. WHEREAS, as a condition to the Lender's extending financing to the Company pursuant to the Loan Agreement, each of the Company and certain of its subsidiaries will grant to the Lender a security interest in all of its right, title and interest in, to and under all of its assets, including, without limitation, its inventory, work in process, accounts receivable, accounts, contract rights, general intangibles, goods, merchandise, equipment, chattel paper, instruments, contract rights, permits, software, books and records, investment property, intellectual property, documents, equipment, machinery, fixtures, furnishings, tools, furniture and trade fixtures now owned or hereafter acquired, and all additions, modifications, alterations, improvements, upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing, and all proceeds and products of the same (all such assets and personal property, the "***Encumbered Property***").

NOW, THEREFORE, in consideration of the premises and covenants herein contained and as an inducement to the Lender to enter into the Loan Agreement and the other Loan Documents and to make loans and provide other financial accommodations to the Company thereunder, the parties hereto agree as follows:

1. The Landlord hereby confirms to the Lender that:

1.1 The Lease is in full force and effect (subject to possible early termination in accordance with its express terms), creates a valid and subsisting leasehold interest and estate in and to the Premises, is enforceable in accordance with its terms and has not been modified or amended.

1.2 The Lease embodies the entire agreement between the Landlord and the Company with respect to the construction, occupancy and use of the Premises. There are no other agreements or understandings between the Landlord and the Company with regard to the construction, occupancy or use of the Premises, and no other agreements or understandings whatsoever between the Landlord and the Company pertaining in any way to the Premises except for the Lease.

1.3 Rent is payable under the Lease at a rate calculated as provided in the Lease. The Company has no monetary obligation to the Landlord in respect of the use or occupancy of the Premises except for the rent and other charges specifically set forth in the Lease.

1.4 The term of the Lease commenced on August 1, 2009 and is scheduled to expire on January 31, 2016 (other than to the extent termination or extension rights may be available under the Lease).

1.5 To the actual knowledge of the Landlord, there are no uncured defaults, breaches or events of default by the Company in the observance or performance of any of its obligations, or facts or circumstances which would, with the passage of time or the delivery of notice, or both, constitute a default, breach, or event of default thereunder.

1.6 The Landlord acknowledges that the Company is entering into the Loan Agreement and the other Loan Documents and agrees that the transactions contemplated thereby will not result in a default under the Lease.

2. The Landlord acknowledges that the Lender is about to enter into various financing arrangements with the Company pursuant to the Loan Agreement and the other Loan Documents and, as a condition thereto, the Company will grant to the Lender a security interest in all of the Company's right, title and interest in, to and under the Encumbered Property. The Landlord acknowledges that pursuant to the applicable laws governing the ATVM Program, Lender is to be granted a first lien or security interest in all property acquired with loan funds, which may include fixtures that become a part of the Premises demised under the Lease. The Landlord acknowledges the validity of the liens in favor of the Lender on the Encumbered Property and, until such time as the obligations of the Company to the Lender under the Loan Documents are paid in full in cash (but in no event longer than the end of the Disposition Period described in Section 9 below), the Landlord agrees to subordinate any interest it may now or hereafter have in the Encumbered Property including, without limitation, any and all existing liens, whether contractual or statutory, in favor of the Landlord, and agrees not to distrain or levy upon any Encumbered Property or to assert any landlord lien, right of distraint or other claim against the Encumbered Property for any reason.

3. The Landlord hereby agrees to deliver written notice to the Lender, by and through the DOE, promptly after delivery of same to the Company, of any default by the Company under the Lease and any termination or expiration of the Lease, which written notice shall, as applicable, specifically describe each alleged default of the Company, including, without limitation, if any such default by the Company is a failure to pay any of the Company's monetary obligations under the Lease and, if so, the exact amount owed by the Company to the Landlord. Any written notice to the Lender shall be forwarded to it via United States mail, registered or certified, return receipt requested, first class postage pre-paid, at:

U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585
Attention: ATVM Loan Program

The Landlord hereby agrees that the Lender shall be entitled in its sole discretion, but shall not be required, to cure any default by the Company under the Lease, and the Landlord shall accept any such cure by the Lender as if the same were made by the Company.

4. Upon the expiration or earlier termination of the Lease, the Landlord will permit the Lender and its representatives to enter the Premises for the purpose of securing and/or removing any or all of the Encumbered Property (at the Lender's election); **provided** that the period during which the Lender may exercise such entry right (the "***Disposition Period***") shall not exceed one hundred eighty (180) days following receipt by the Lender of written notice from the Landlord (a ***"Disposition Notice"***) that the Lease has expired or terminated. If any injunction or stay is issued that prohibits the Lender from removing the Encumbered Property, the commencement of the Disposition Period will be extended until such injunction or stay is lifted or removed. Notwithstanding the foregoing, the Lender shall have no obligation to remove any of the Encumbered Property. The Lender's entry right shall be subject to the following terms and conditions:

(a) During the Disposition Period, unless the Lender has delivered a notice to the Landlord within ten (10) business days after receipt of the Disposition Notice that the Lender does not require the right of entry and will does not intend to remove the Encumbered Property, the Lender shall pay to the Landlord a fee in the amount of $7,000 per day for each day of the Disposition Period (the ***"Access Fee"***), from the commencement of the Disposition Period to its expiration or earlier termination pursuant to this section.

(b) The Lender's right of access to the Premises shall terminate as of the end of the Disposition Period, whether or not the Lender has removed all of the Encumbered Property. Upon the expiration of the Disposition Period, any Encumbered Property that remains in the Premises shall automatically and without further act by the Landlord or the Lender, become the property of the Landlord, free and clear of any claim or interest therein by the Lender, and without payment therefor by the Landlord. Notwithstanding the foregoing, the Lender may notify the Landlord at any time after receipt of the Landlord's Disposition Notice that the Lender no longer requires access to the Premises, in which case the Lender shall have no further right of access to the Premises and the Lender's obligation to pay the Access Fee shall terminate.

(c) The Lender agrees and acknowledges that the Lender's right of access is a non-exclusive license (and not a lease of the Premises), and that the Landlord shall have the right to make any use of the Premises during the Disposition Period that does not materially interfere with the Lender's removal of the Encumbered Property.

(d) In the event the Lender has not completed its removal of the Encumbered Property by the end of the Disposition Period, the Landlord may elect either to (i) change all locks, passcards and security codes as required to secure the Premises and prevent the Lender from further access; or (ii) charge the Lender an adjusted Access Fee equal to one hundred fifty percent (150%) of the then-current fair market rental value of the Premises (prorated on a daily basis), as determined by the Landlord in its reasonable discretion. The acceptance of such adjusted Access Fee shall not be deemed to create a tenancy in favor of the Lender, and shall not give the Lender any possessory interest in the Premises.

5. During the Disposition Period, (a) the Lender and its representatives may inspect, repossess, remove and otherwise deal with the Encumbered Property, and the Lender may advertise and conduct public auctions or private sales of the Encumbered Property at the Premises, in each case without material interference by Landlord, and (b) the Lender shall accommodate inspections by Landlord and prospective tenants and shall cooperate in the Landlord's reasonable efforts to re-lease the Premises. If the Lender conducts a public auction or private sale of the Encumbered Property at the Premises, the Lender shall use reasonable efforts to notify Landlord first and to hold such auction or sale in a manner which would not unduly disrupt Landlord's use of the Premises or the quiet enjoyment of the occupants of other properties in the Stanford Research Park or adjacent neighborhoods.

6. The Landlord represents and warrants to the Lender that the Encumbered Property is not subject to any lien or claim in favor of any mortgagee of the Landlord's fee interest in the Premises, and the Landlord agrees that any future mortgage or lien on the Landlord's fee interest in the Premises in favor of any mortgagee of the Premises during the term of the Lease will not create a security interest or lien against the Encumbered Property.

7. During the term of the Lease, the Lender may remove the Encumbered Property from the Premises as permitted under the Loan Documents, and the Landlord hereby grants to the Lender (and the Company hereby consents to the same) the right of entry to the Premises to inspect or remove any of the Encumbered Property, including, without limitation, by public auction or private sale, at any reasonable time or times, and with reasonable notice, but subject to the terms and conditions of Section 8 below.

8. The Lender shall repair, restore and remediate, at the Lender's sole cost, (a) all material damage to building structural components or building systems, (b) any damage that impairs access to the Premises or poses a threat to worker safety, and (c) any release of hazardous materials or contamination of the soil or groundwater of the Premises; to the extent such damage, release or contamination was caused by removal of the Encumbered Property or is otherwise due to the Lender's exercise of its rights under this Agreement. The Lender shall be liable to the Landlord for any and all losses, costs, liabilities, claims, judgments, liens, damages (including diminution in the fair market value of the Premises but excluding any other consequential or punitive damages) and expenses, including, without limitation, reasonable

attorneys' fees and out-of-pocket costs (including amounts invoiced by the Landlord's in-house counsel at reasonable rates, but specifically excluding all other internal costs of Landlord), and reasonable investigation costs (collectively, "***Losses***"), incurred in connection with or arising from any default by the Lender in the observance or performance of any of the terms, covenants or conditions of this Agreement on the Lender's part to be observed or performed, including without limitation any damage to the Premises caused by the removal of the Encumbered Property as described in this Section 8 and any failure by the Lender to cease exercise of its entry rights pursuant to Section 4 at the conclusion of the Disposition Period; provided that the Lender shall have no liability resulting from or caused by the Lender's failure to remove any or all of the Encumbered Property, including, without limitation, any lost rent or any claims made by any succeeding tenant due to such failure or any loss or damage incurred by the Landlord as a result of any delay in the Landlord's redevelopment plans for the Premises due to such failure.

9. In no event shall the Lender be: (a) liable or responsible for any act or omission of the Company under the Lease; (b) subject to any claims or defenses which the Landlord might have against the Company; (c) liable or responsible for any default by the Company under the Lease or obligated to cure any prior default by the Company under the Lease; or (d) liable or responsible for any agreement of the Company to indemnify or defend the Landlord, or (e) liable or responsible for any agreement of the Company to reimburse the Landlord for any sums expended by the Landlord pursuant to the Lease.

10. Landlord hereby informs Lender that detectable amounts of Hazardous Materials have come to be located on, beneath and/or in the vicinity of the Premises, as more particularly described in the Lease (and together with the Remaining Materials, the "***Pre-Existing Condition***"). Landlord has made available to Lender all material documentation in Landlord's possession regarding the Pre-Existing Condition. Lender has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of the Pre-Existing Condition on Tenant's business operations at the Premises. Landlord makes no representation or warranty with regard to the environmental condition of the Premises. Lender hereby releases Landlord and Landlord's officers, directors, trustees, agents and employees from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Lender may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto the Premises, including without limitation the Pre-Existing Condition. In connection with such release, Lender hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

11. Except to the extent of Lender's Exacerbation of the Pre-Existing Condition, Landlord hereby releases Lender from any and all claims, demands, debts, liabilities and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Landlord may have, claim to have or which may hereafter accrue against the released

parties or any of them, arising out of or relating to or in any way connected with the Pre-Existing Condition. In connection with such release, Landlord hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

12. In the event that Lender is named in any enforcement action or litigation regarding the Pre-Existing Condition which is brought by a governmental entity with jurisdiction over the remediation of the Pre-Existing Condition (collectively, an "***Action***"), Lender will provide notice of the Action to Landlord (whether or not Landlord is also named in the Action).

12.1 If the Action also involves alleged Exacerbation of the Pre-Existing Condition by Lender, or contamination of the Premises by Lender that does not relate to the Pre-Existing Condition (collectively, "***Claims Against Lender***"), Landlord shall have no responsibility for dismissal of such claims, which Lender shall defend at its sole cost and expense.

12.2 The Lender and the Landlord agree to use reasonable efforts to coordinate a response to any Action, including, if appropriate in their reasonable discretion, to enter into a mutually agreeable joint defense agreement.

12.3 The Landlord shall reimburse the Lender for any documented out-of-pocket costs reasonably incurred by Lender and arising out of the Action (including any defense costs, attorneys' or consultants' fees, fines, penalties, and remediation costs) up to a maximum reimbursable amount of Two Hundred Thousand Dollars ($200,000), except to the extent such costs relate to Claims Against Lender. Landlord shall have no liability to the extent any costs incurred by Lender relate to Claims Against Lender. Landlord shall have no liability to Lender for defense costs, legal fees, remediation costs, or any other cost or expense related to the Action if Lender fails to provide notice of the Action to Landlord. Lender shall use commercially reasonable efforts to obtain its dismissal from the Action and, if Lender is unable to obtain its dismissal from the Action, shall use commercially reasonable efforts in defending the Action.

13. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the state of California, without regard to its conflicts of laws principles.

14. Any right of Lender provided for in this Agreement may be exercised by the Lender or any department or instrumentality of the United States of America, or by any collateral agent, on Lender's behalf.

15. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one original of the Lease. Delivery of faxed or electronic signatures shall be effective to create a binding and enforceable agreement.

IN WITNESS WHEREOF, this Collateral Access Agreement has been executed and delivered as of the date first above written.

LANDLORD:

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Title: Managing Director, Real Estate

LENDER:

UNITED STATES OF AMERICA

By: U.S. DEPARTMENT OF ENERGY

By: _____

Title: _____

COMPANY:

TESLA MOTORS, INC.

By: _____

Title: _____

16. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one original of the Lease. Delivery of faxed or electronic signatures shall be effective to create a binding and enforceable agreement.

IN WITNESS WHEREOF, this Collateral Access Agreement has been executed and delivered as of the date first above written.

LANDLORD:

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Title: _____

LENDER:

UNITED STATES OF AMERICA

By: U.S. DEPARTMENT OF ENERGY

By: _____

Title: DIRECTOR, ATVM LOAN PROGRAM

COMPANY:

TESLA MOTORS, INC.

By: _____

Title: _____

16. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one original of the Lease. Delivery of faxed or electronic signatures shall be effective to create a binding and enforceable agreement.

IN WITNESS WHEREOF, this Collateral Access Agreement has been executed and delivered as of the date first above written.

LANDLORD:

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Title: _____

LENDER:

UNITED STATES OF AMERICA

By: U.S. DEPARTMENT OF ENERGY

By: _____

Title: _____

COMPANY:

TESLA MOTORS, INC.

By: _____

Title: Chief Financial Officer

WSGR Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

650 Page Mill Road
Palo Alto, CA 94304-1050
PHONE 650.493.9300
FAX 650.493.6811
www.wsgr.com

January 20, 2010

United States Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

Midland Loan Services, Inc.
as Collateral Trustee
10851 Mastin, Suite 700
Overland Park, KS 66210

Re: **Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010, by and between Tesla Motors, Inc. and the United States Department of Energy, an agency of the United States of America**

Ladies and Gentlemen:

We have acted as special counsel to Tesla Motors, Inc., a Delaware corporation ("**Borrower**"), and Tesla Motors New York LLC, a New York limited liability company ("**Guarantor**"), in connection with the execution and delivery of (i) the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "**Arrangement Agreement**"), by and between Borrower and the United States Department of Energy, an agency of the United States of America ("**DOE**"), (ii) the Guarantee, dated as of January 20, 2010 (the "**Guarantee**"), made by the Guarantor in favor of DOE, the Federal Financing Bank and the holders of the Notes (as defined therein) from time to time, and (iii) the Collateral Trust Agreement, dated as of January 20, 2010 (the "**Collateral Trust Agreement**"), by and among Borrower, Guarantor and Midland Loan Services, Inc., as collateral trustee (the "**Collateral Trustee**"). This opinion is rendered to you pursuant to Section 5.1(k) of the Arrangement Agreement. All capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Arrangement Agreement.

In rendering the opinions expressed below, we have examined executed originals or copies of the following documents:

(a) the Arrangement Agreement;

(b) the Guarantee;

(c) the Collateral Trust Agreement;

(d) the Pledge and Security Agreement, dated as of the date hereof (the "**Security Agreement**"), made by Borrower and the Guarantor in favor of the Collateral Trustee;

(e) the Note Purchase Agreement;

(f) Note P;

(g) Note S;

(h) (i) the Notice of Grant of Security Interest in Patents, dated as of the date hereof (the "**Patent Security Agreement**"), made by Borrower in favor of the Collateral Trustee, and (ii) the Notice of Grant of Security Interest in Trademarks, dated as of the date hereof (the "**Trademark Security Agreement**"), made by Borrower in favor of the Collateral Trustee;

(i) the Warrant, dated as of the date hereof (the "**Warrant**"), issued by Borrower in favor of DOE;

(j) the Registration Rights Agreement, dated as of the date hereof, by and between Borrower and DOE;

(k) (i) the Deposit Account Control Agreement, dated as of the date hereof (the "**CNB Control Agreement**"), by and among Borrower, Collateral Trustee and City National Bank, (ii) the Restricted Account and Securities Account Control Agreement, dated as of the date hereof (the "**Wells Fargo Control Agreement**"), by and among Borrower, Collateral Trustee and Wells Fargo Bank, National Association, (iii) the Deposit Account Control Agreement, dated as of the date hereof (the "**HSBC Control Agreement**"), by and among Borrower, Collateral Trustee and HSBC Bank USA, National Association, (iv) the Securities Account Control – Consent Agreement, dated as of the date hereof (the "**Wells Fargo Securities Control Agreement**"), by and among Borrower, Collateral Trustee and Wells Fargo Securities, LLC, (v) the Blocked Account Control Agreement (Dedicated Account), dated as of the date hereof (the "**Dedicated Account Control Agreement**"), by and among Borrower, Collateral Trustee and PNC Bank, National Association and (vi) the Blocked Account Control Agreement (Initial Debt Service Account), dated as of the date hereof (the "**Initial Debt Service Account Control Agreement**"), by and among Borrower, Collateral Trustee and PNC Bank, National Association;

(l) (i) the Uncertificated Securities Control Agreement, dated as of the date hereof (the "**Taiwan Issuer Control Agreement**"), by and among Borrower, Collateral Trustee and Tesla Motors Taiwan Limited, (ii) the Uncertificated Securities Control Agreement, dated as of the date hereof (the "**GmbH Issuer Control**

Agreement"), by and among Borrower, Collateral Trustee and Tesla Motors GmbH, and (iii) the Uncertificated Securities Control Agreement, dated as of the date hereof (the "**Monaco Issuer Control Agreement**"), by and among Borrower, Collateral Trustee and Tesla Motors S.A.R.L.;

(m)(i) Share Certificate No. 4 representing 65 shares of common stock of Tesla Motors Limited held in the name of Borrower (the "**Limited Certificate**"), (ii) Share Certificate No. CS-1 representing 65 shares of common stock of Tesla Motors Canada Inc. held in the name of Borrower (the "**Canada Certificate**"), and (iii) Stock Certificate No. 43 representing 2,677 shares of common stock of AC Propulsion, Inc. held in the name of Borrower (the "**AC Propulsion Certificate**");

(n) (i) the Sixth Amended and Restated Certificate of Incorporation, as amended by an amendment filed on January 15, 2010 and certified by the Delaware Secretary of State on such date, and Bylaws of Borrower, and (ii) the Articles of Organization, certified by the New York Secretary of State, and Operating Agreement of Guarantor, as amended to date;

(o) (i) records of proceedings of the Board of Directors of Borrower during or by which resolutions were adopted relating to matters covered by this opinion, and (ii) records of proceedings of the sole member of Guarantor during or by which resolutions were adopted relating to matters covered by this opinion;

(p) the certificates of governmental authorities and the letters from CT Corporation System with respect to the standing of Borrower and Guarantor listed on **Schedule A** hereto;

(q) the certificates of the Secretary and certain officers or the sole member of Borrower and Guarantor as to certain factual matters;

(r) copies of the UCC-1 financing statements attached as **Schedule B** hereto (the "**UCC-1 Financing Statement**");

(s) each of the judgments and decrees that are expressly identified on **Schedule C** hereto, if any (the "**Reviewed Judgments**"); and

(t) each of the agreements that would be listed as exhibits to the Borrower's Form S-1 if it were filed with the Securities and Exchange Commission on the date hereof, that would be included therein pursuant to the requirements of clauses (2), (4), (9)

or (10) of Item 601(b) of Regulation S-K (other than those which have expired, terminated or are otherwise no longer in effect), which agreements are expressly identified on **Schedule D** hereto (the "**Reviewed Agreements**").

In addition, we have reviewed originals or copies of such corporate and limited liability company records of Borrower and Guarantor, certificates of public officials and such other documents that we consider necessary or advisable for the purpose of rendering the opinions and statements set forth below. We have not independently established the facts stated therein. The documents listed in paragraphs (a) through (l) above are sometimes referred to herein as the "**Transaction Documents**."

We have assumed the following for purposes of rendering the opinions set forth herein:

(i) The genuineness of all signatures, the authenticity and completeness of all documents submitted to us as originals and the conformity to original documents of all copies submitted to us.

(ii) That each party to any document that we have examined (other than Borrower and Guarantor in connection with the Transaction Documents) has satisfied those requirements that are applicable to it to the extent necessary to make such document a valid and binding obligation of such party, enforceable against such party in accordance with its terms.

(iii) That (A) the representations and warranties as to factual matters made by the parties to the Transaction Documents and pursuant thereto are correct, (B) the representations and warranties made by officers or the sole member of Borrower and Guarantor as to factual matters made in the certificates delivered in connection with the Transaction Documents are correct; and (C) the parties to the Transaction Documents have complied and will comply with their obligations under the Transaction Documents.

As used in the opinions or statements set forth below, the expressions "to our knowledge," "known to us" or similar language with reference to matters of fact refer to the current actual knowledge of the attorneys of this firm who have rendered legal services in connection with the representation described in the first paragraph of this opinion letter. Except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of any fact, and no inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of Borrower or Guarantor or the rendering of the opinions or statements set forth below.

On the basis of the foregoing and in reliance thereon, and based upon examination of such questions of law as we have deemed appropriate, and subject to the assumptions, exceptions, qualifications, and limitations set forth herein, we advise you that in our opinion:

1. Borrower is a corporation duly incorporated and validly existing under the laws of the State of Delaware and is in good standing under such laws. Borrower has requisite corporate power to carry on its business as currently conducted. Borrower is qualified to do business as a foreign corporation in the States of California, Colorado, Florida, Illinois, New York and Washington.

2. Guarantor is a limited liability company duly organized and validly existing under the laws of the State of New York and is in good standing under such laws. Guarantor has requisite limited liability company power to carry on its business as currently conducted.

3. Borrower has the corporate power to execute and deliver the Transaction Documents to which it is a party and to carry out and perform its obligations under the terms of such Transaction Documents. Guarantor has the limited liability company power to execute and deliver the Transaction Documents to which it is a party and to carry out and perform its obligations under the terms of such Transaction Documents.

4. All corporate action on the part of Borrower, its directors and shareholders necessary for the authorization, execution and delivery of the Transaction Documents to which it is a party by Borrower, and the performance by Borrower of its obligations under such Transaction Documents has been taken. All limited liability company action on the part of Guarantor and its member necessary for the authorization, execution and delivery of the Transaction Documents to which it is a party by Guarantor, and the performance by Guarantor of its obligations under such Transaction Documents has been taken.

5. Each of the Transaction Documents to which Borrower or Guarantor is a party has been duly and validly executed and delivered by Borrower or Guarantor, as applicable, and constitutes a valid and binding obligation of Borrower or Guarantor, as applicable, enforceable against Borrower or Guarantor, as applicable, in accordance with its terms.

6. The execution and delivery by Borrower and Guarantor of the Transaction Documents to which each is a party and the undertaking of the covenants set forth in the Transaction Documents by Borrower and Guarantor do not (a) violate any provision of the Certificate of Incorporation or Bylaws of Borrower or the Articles of Organization or Operating Agreement of Guarantor; (b) violate any applicable law, rule or regulation known to us to be customarily applicable to transactions of this nature; (c) violate any Reviewed Judgment; or (d) violate or constitute a default under any Reviewed Agreement or, to our

knowledge, result in or require the creation or imposition of any lien on any of the properties or revenues of Borrower or Guarantor pursuant to any provision of any United States federal or New York or California state law, the General Corporation Law of the State of Delaware (the "**DGCL**"), the Delaware Uniform Commercial Code (the "**DUCC**") or any such Reviewed Agreement, except the liens created in favor of the Collateral Trustee.

7. No consent, approval or authorization of, and no designation, declaration or filing with, any governmental authority on the part of Borrower or Guarantor is required in connection with the valid execution or delivery by Borrower or Guarantor of the Transaction Documents to which each is a party and the undertaking of the covenants set forth in the Transaction Documents by Borrower and Guarantor in accordance with the terms of the Arrangement Agreement.

8. Neither Borrower nor Guarantor is required to register as an "investment company" under the Investment Company Act of 1940, as amended.

9. Assuming that Borrower will comply with the provisions of the Arrangement Agreement relating to the use of proceeds, the making of the loans under the Note Purchase Agreement will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

10. The Security Agreement is sufficient to create a valid security interest in favor of Collateral Trustee for the benefit of the Secured Parties in the collateral described therein to the extent a security interest in such collateral may be created under Article 9 of the New York Uniform Commercial Code.

11. If a financing statement in the form of the UCC-1 Financing Statement naming Borrower as debtor is communicated to the Delaware Secretary of State by an authorized method of communication and an amount equal to the applicable filing fee is tendered to such filing office, such filing office will have an obligation to accept such financing statement. Upon acceptance of such UCC-1 Financing Statement by such filing office, the security interest in the collateral described in both the UCC-1 Financing Statement and the Security Agreement, and for which perfection under Article 9 of the DUCC may occur by the filing of a UCC-1 financing statement with the Delaware Secretary of State, will be perfected. If a financing statement in the form of the UCC-1 Financing Statement naming Guarantor as debtor is communicated to the New York Secretary of State by an authorized method of communication and an amount equal to the applicable filing fee is tendered to such filing office, such filing office will have an obligation to accept such

financing statement. Upon acceptance of such UCC-1 Financing Statement by such filing office, the security interest in the collateral described in both the UCC-1 Financing Statement and the Security Agreement, and for which perfection under Article 9 of the New York Uniform Commercial Code may occur by the filing of a UCC-1 financing statement with the New York Secretary of State, will be perfected. The filings of the financing statements as described in this paragraph 11 in the filing offices specified in this paragraph 11 are the only filings required to perfect the security interests in the collateral described in this paragraph 11.

12. Upon taking delivery in the State of New York of the Limited Certificate, the Canada Certificate and AC Propulsion Certificate (collectively, the "**Certificates**"), the security interest in the Certificates will be perfected to the extent that the Certificates consist of certificated securities.

13. The security interest in the deposit accounts specified in the CNB Control Agreement is perfected by control pursuant to the CNB Control Agreement. The security interest in the deposit accounts specified in the Wells Fargo Control Agreement is perfected by control pursuant to the Wells Fargo Control Agreement. The security interest in the deposit accounts specified in the HSBC Control Agreement is perfected by control pursuant to the HSBC Control Agreement. The security interest in the securities account specified in the Wells Fargo Securities Control Agreement and the security entitlements to the financial assets carried therein are perfected by control pursuant to the Wells Fargo Securities Control Agreement. The security interest in the securities account specified in the Dedicated Account Control Agreement and the security entitlements to the financial assets carried therein are perfected by control pursuant to the Dedicated Account Control Agreement. The security interest in the securities account specified in the Initial Debt Service Account Control Agreement and the security entitlements to the financial assets carried therein are perfected by control pursuant to the Initial Debt Service Account Control Agreement.

14. The shares of Series E Preferred Stock issuable upon exercise of the Warrant have been duly authorized, and when issued in accordance with the terms of the Warrant, will be duly authorized, validly issued, fully paid and non-assessable. The Board of Directors of Borrower has adopted a resolution reserving the shares of Series E Preferred Stock issuable upon exercise of the Warrant.

15. The shares of Common Stock issuable upon conversion of the Series E Preferred Stock into which the Warrant is exercisable, have been duly authorized, and when issued in accordance with the terms of Borrower's Certificate of Incorporation, will be validly

issued, fully paid and non-assessable. The Board of Directors of Borrower has adopted a resolution reserving the shares of Common Stock issuable upon conversion of the Series E Preferred Stock into which the Warrant is exercisable.

The opinions set forth above are subject to the following exceptions, qualifications, limitations, comments and additional assumptions:

A. We express no opinion as to any matter relating to laws of any jurisdiction other than the federal laws of the United States of America, the DGCL, the DUCC, the laws of the State of New York, and the laws of the State of California (provided that our opinion in paragraph 5 as to enforceability is limited to the laws of the State of New York), as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction or whether the laws of any particular jurisdiction govern any aspect of the Transaction Documents. As you know, we are not licensed to practice law in the State of Delaware and, accordingly, our opinions as to the DGCL and the DUCC are based solely on a review of the official statutes of the State of Delaware.

B. We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights of creditors generally, or (ii) the effect of general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, whether considered in a proceeding in equity or at law.

C. For purposes of our opinions in paragraph 5, we have assumed that a court would apply the laws of the State of New York). We express no opinion as to the governing law clause of any Transaction Document that purports to choose the federal laws of the United States for matters not governed by such laws.

D. We express no opinion as to the enforceability of any provision of the Transaction Documents (i) purporting to waive broadly or vaguely stated rights, unknown future defenses, rights to damages, or the benefits of other statutory, regulatory or constitutional rights that cannot be waived or, if they can be waived, cannot be waived prospectively; (ii) imposing penalties, forfeitures, liquidated damages, late charges, acceleration of future amounts due (other than principal) without appropriate discount to present value, prepayment charges, or increased interest rates upon default; or (iii) prescribing or varying rules of evidence, method or quantum of proof or other legal standards in a manner contrary to applicable statutes and rules of law.

E. We express no opinion as to the enforceability of any provisions in the Transaction Documents (i) giving rights or remedies, or permitting the exercise of rights or remedies, in a manner not in compliance with applicable statutes and rules of law, (ii) providing that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to any other right or remedy, or that the election of some particular remedy does not preclude recourse to one or more other remedies, or (iii) providing for rights of set-off.

F. We express no opinion as to the enforceability of indemnification and contribution provisions to the extent they may be subject to limitations of public policy and the effect of applicable statutes and rules of law.

G. We express no opinion as to the applicability or effect of compliance or non-compliance by any lender (or its agent) with any state, federal or other laws applicable to such lender (or its agent) or to the transactions contemplated by the Transaction Documents because of the nature of its business, including its legal or regulatory status.

H. In rendering the opinions set forth in paragraphs 1 and 2 as to due incorporation or organization, valid existence, good standing and qualification to do business, we have relied solely upon documents and certificates referenced in paragraphs (n) and (p) above.

I. Except as set forth in paragraphs 10, 11, 12 and 13 above, we express no opinion as to the creation, attachment, validity, perfection or priority of a security interest in any item of collateral or the necessity of making any filings or taking any other action in connection therewith.

J. We express no opinion as to the enforceability or legal effect of any provision of any Transaction Document purporting to reinstate, as against any obligor or guarantor, obligations or liabilities of such obligor which have been avoided or which have arisen from transactions which have been rescinded or the payment of which has been required to be returned by any court of competent jurisdiction.

K. In rendering the opinion set forth in paragraph 6 above concerning violations of and defaults under Reviewed Agreements and violations of Reviewed Judgments, we have relied solely upon an examination of the Reviewed Agreements and Reviewed Judgments in the forms provided to us by Borrower. With regard to the opinion in paragraph 6 above concerning violations of and defaults under Reviewed Agreements, we have assumed that such Reviewed Agreements would be interpreted and enforced in accordance with their plain meaning. Our opinion in clause (b) of paragraph 6 above is intended to express our opinion that the execution and delivery by Borrower of the

Transaction Documents and the undertaking of the covenants set forth in the Transaction Documents will not result in a violation of any law, rule, regulation of the State of New York or the State of California or United States federal law that a lawyer practicing in the State of New York or the State of California, as applicable, exercising customary professional diligence would reasonably recognize to be applicable to Borrower and the transactions contemplated by the Transaction Documents. We express no opinion regarding compliance or non-compliance (or the effect thereof) with any federal or state securities laws.

L. This opinion speaks only at and as of its date and is based solely on the facts and circumstances known to us at and as of such date. We express no opinion as to the effect on any lender's (or its agent's) rights under the Transaction Documents of any statute, rule, regulation or other law which is enacted or becomes effective after, or of any court decision which changes the law relevant to such rights which is rendered after, the date of this opinion or the conduct of the parties following the closing of the contemplated transaction. In addition, in rendering this opinion, we assume no obligation to revise or supplement this opinion should the present laws of the jurisdictions mentioned herein be changed by legislative action, judicial decision or otherwise.

* * *

We advise you that, to our knowledge, there are no lawsuits pending against Borrower or Guarantor that seek to challenge the enforceability of any of the Transaction Documents nor, to our knowledge, has Borrower or Guarantor received any written threat thereof. We note that we have not conducted a docket search in any jurisdiction with respect to lawsuits that may be pending against Borrower or Guarantor.

* * *

This opinion is made with the knowledge and understanding that you (but no other person) may rely thereon in entering into the Arrangement Agreement and the Collateral Trust Agreement and is solely for your benefit, and this opinion may not be disclosed to or relied upon by any person other than you, except that (i) this opinion may be disclosed to the Federal Financing Bank, (ii) this opinion may be disclosed to regulatory and other governmental authorities having jurisdiction over you requesting (or requiring) such disclosure, (ii) this opinion may be disclosed to and relied upon by an assignee, pursuant to an assignment that is permitted under and made in accordance with the Arrangement Agreement, the Collateral Trust Agreement, the Warrant or the Registration Rights Agreement on the condition and with the understanding that (A) this opinion does not extend to any issue or matter related to any such assignment or arising from or out of any such assignment (as distinct from the subject transaction), (B) this opinion is limited and qualified with respect to an

assignee in the same manner that it is limited and qualified as set forth above with respect to the original addressee, and (C) any reliance by an assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Wilson Sonsini Goodrich & Rosati, P.C.

SCHEDULE A

Certificates of Governmental Authorities and Letters from CT Corporation System

1. Certificate of the Secretary of State of the State of Delaware, dated January 15, 2010, with respect to the standing of Borrower as a corporation incorporated under the laws of the State of Delaware

2. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a corporation incorporated under the laws of the State of Delaware

3. Certificate of the Secretary of State of the State of California, dated January 4, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of California

4. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of California

5. Certificate of the Secretary of State of the State of Colorado, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Colorado

6. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Colorado

7. Certificate of the Department of State of the State of Florida, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Florida

8. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Florida

9. Certificate of the Secretary of State of the State of Illinois, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Illinois

10. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Illinois

11. Certificate of the Secretary of State of the State of New York, dated January 6, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of New York

12. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of New York

13. Certificate of the Secretary of State of the State of Washington, dated January 8, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Washington

14. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Borrower as a foreign corporation qualified to do business in the State of Washington

15. Certificate of the Secretary of State of the State of New York, dated January 14, 2010, with respect to the standing of Guarantor as a limited liability company organized under the laws of the State of New York

16. Letter from CT Corporation System, dated January 20, 2010, with respect to the standing of Guarantor as a limited liability company organized under the laws of the State of New York

SCHEDULE B

UCC-1 Financing Statements

p

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [Optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: Tesla Motors, Inc.

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1050 Bing Street	San Carlos	CA	94070	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		Corporation	Delaware	DE 3677166 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Midland Loan Services, Inc., as Collateral Trustee

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10851 Mastin, Suite 700	Overland Park	KS	66210	USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all assets of the Debtor, whether now existing or hereafter arising.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtors(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

File with DE SOS

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [Optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: Tesla Motors New York LLC

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1050 Bing Street	San Carlos	CA	94070	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		Limited Liability Company	New York	☑ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: Midland Loan Services, Inc., as Collateral Trustee

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10851 Mastin, Suite 700	Overland Park	KS	66210	USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all assets of the Debtor, whether now existing or hereafter arising.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

File with NY SOS

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

SCHEDULE C

Reviewed Judgments

None.

SCHEDULE D

Reviewed Agreements

1. Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, between Borrower and certain holders of Borrower's capital stock named therein

2. Offer Letter between Borrower and Elon Musk dated as of October 13, 2008

3. Offer Letter between Borrower and Deepak Ahuja dated as of June 13, 2008, and amended by that certain Letter Agreement dated as of on June 4, 2009

4. Relocation Agreement between Borrower and Deepak Ahuja dated as of October 31, 2008 and amended by that certain Letter Agreement dated as of June 4, 2009

5. Offer letter between Borrower and Jeffrey B. Straubel dated as of May 6, 2004

6. Offer letter between Borrower and Michael F. Donoughe dated as of June 4, 2008, and amended by that certain Letter Agreement dated as of December 10, 2008

7. Offer Letter between Borrower and John Walker dated as of August 17, 2009

8. Commercial Lease between Borrower and The Board of Trustees of The Leland Stanford Jr. University dated as of August 6, 2009

9. Commercial Single-Tenant Lease between Borrower and Russell A. and Deborah B. Margiotta, Trustees of the Margiotta Family Trust UTA May 26, 1981 dated as of June 7, 2005

10. Commercial Single-Tenant Lease between Borrower and James R. Hull dated as of August 16, 2006

11. Commercial Lease between Borrower and The Board of Trustees of The Leland Stanford Jr. University dated as of July 25, 2007

12. License Agreement between Borrower and MS Kearny Northrop Avenue, LLC dated as of July 23, 2009

13. Supply Agreement for Products and Services Based on Lotus Elise Technology between Lotus Cars Limited and Borrower dated as of July 11, 2005

14. Amendment No. 1 to Supply Agreement for Products and Services Based on Lotus Elise Technology between Lotus Cars Limited and Borrower dated as of August 4, 2009

15. Supply Agreement between Eberspacher (UK) Ltd. and Borrower dated as of September 1, 2006

16. Supply Agreement between Perei Group (UK) Ltd. and Borrower dated as of September 1, 2006

17. Supply Agreement between Burgaflex UK Ltd. and Borrower dated as of September 1, 2006

18. Supply Agreement by and among Sanyo Electric Co. Ltd. Mobile Energy Company, Sanyo Energy (USA) Corporation and Borrower dated as of February 1, 2007

19. Amendment No. 1 to Supply Agreement by and among Sanyo Electric Co. Ltd. Mobile Energy Company, Sanyo Energy (USA) Corporation and Borrower effective as of February 1, 2007

20. Supply Agreement by and between Taiway Ltd. and Borrower dated as of February 12, 2007

21. Supply Agreement between Chroma ATE Inc. and Borrower dated as of April 19, 2007

22. Supply Agreement between Polytec Holden Ltd. and Borrower dated as of April 13, 2007

23. Letter Agreement Re: Modification to Tesla Motors Terms & Conditions of Purchase between BorgWarner TorqTransfer Systems Inc. and Borrower dated as of September 22, 2008

24. ZEV Credits Agreement between American Honda Motor Co., Inc. and Borrower dated as of February 12, 2009

25. Addendum to ZEV Credits Agreement between American Honda Motor Co., Inc. and Borrower dated as of February 20, 2009

26. Supply Agreement by and among Panasonic Industrial Company, Panasonic Corporation, acting through Energy Company, and Borrower dated as of July 21, 2009

27. Development Contract between Borrower and Daimler AG dated as of May 1, 2009

28. Exclusivity and Intellectual Property Agreement between Daimler North America Corporation and Borrower dated as of May 11, 2009

29. Side Agreement between Borrower and Blackstar Investco LLC dated as of May 11, 2009

30. Letter Agreement Re: Restrictions on Share Transfer; Certain Voting Restrictions between the Elon Musk Revocable Trust dated July 22, 2003 and Blackstar Investco LLC, dated as of May 11, 2009

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

BORROWER CERTIFICATE
(For Financial Documents Delivered at Closing)

(Delivered pursuant to Sections 5.1(l), 5.1(m) and 5.1(n) of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: January 20, 2010

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Borrower Certificate is delivered to you pursuant to Sections 5.1(l), 5.1(m) and 5.1(n) of the Loan Arrangement and Reimbursement Agreement (the "Arrangement Agreement") dated as of January 20, 2010 by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Borrower Certificate shall have their respective meanings specified in the Arrangement Agreement.

On behalf of the Borrower, I, Deepak Ahuja, HEREBY CERTIFY that I am the duly elected and qualified Chief Financial Officer of the Borrower and FURTHER CERTIFY that, as of the date hereof:

1. Pursuant to Section 5.1(l)(i) of the Arrangement Agreement, the Historical Financial Statements delivered to DOE on or prior to January 20, 2010 and attached hereto as Exhibit 5.1(l)(i), fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, in each case in accordance with GAAP applied on a basis consistent with prior years, subject, in the case of unaudited Financial Statements, to the absence of notes to the financial statements and changes resulting from normal audit and year-end adjustments;

2. Pursuant to Section 5.1(l)(ii) of the Arrangement Agreement, attached hereto as Exhibit 5.1(l)(ii) and delivered to DOE on or prior to January 20, 2010 are computations in reasonable detail demonstrating that, based on the Historical Financial Statements, the Borrower would have been in compliance with the covenants set forth in subsection (c) of

Annex 9.1 of the Arrangement Agreement on the date hereof, as calculated (A) with respect to the Current Ratio, as of September 30, 2009 and (B) with respect to the Cash Balance, on a *pro forma* basis as of November 30, 2009, after giving effect to the expected initial Advance under the Notes as if it had been made on October 30, 2009; *provided that,* solely for the purposes of the certification and calculations required by Section 5.1(l)(ii) of the Arrangement Agreement, the covenants set forth in such subsection (c) of Annex 9.1 of the Arrangement Agreement shall be deemed to apply to the periods described in (A) and (B) above;

3. Pursuant to Section 5.1(m) of the Arrangement Agreement, the business plan delivered to DOE on or prior to January 20, 2010 and attached hereto as Exhibit 5.1(m) contains all of the information required under Section 5.1(m) and is based on good faith estimates and assumptions made by management of the Borrower and management of the Borrower believes that such business plan is reasonable and attainable;

4. Pursuant to Section 5.1(n) of the Arrangement Agreement, attached hereto as Exhibit 5.1(n)-1 is a schedule of Historical Costs, and such schedule is true and complete; and

5. Pursuant to Section 5.1(n) of the Arrangement Agreement, attached hereto as Exhibit 5.1(n)-2 is a schedule of Eligible Project Costs incurred on or after December 15, 2008 through September 30, 2009, and such schedule is true and complete in all material respects.

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

IN WITNESS WHEREOF, the undersigned has executed this Borrower Certificate as of the date first written above.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

[Signature page to Borrower Certificate (Financial Documents Delivered at Closing)]

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit 5.1(l)(i)

Historical Financial Statements

[See attached]

Tesla Motors, Inc.

Consolidated Financial Statements
December 31, 2008 and 2007 and for the three years ended December 31, 2008

Tesla Motors, Inc.
Index
December 31, 2008 and 2007 and for the three years ended December 31, 2008

Page(s)

Report of Independent Auditors 1

Financial Statements

Consolidated Balance Sheets 2

Consolidated Statements of Operations 3

Consolidated Statements of Convertible Preferred Stock and Stockholders' Deficit 4

Consolidated Statements of Cash Flows 5

Notes to Consolidated Financial Statements 6–24

Report of Independent Auditors

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

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of convertible preferred stock and stockholders' deficit and cash flows present fairly, in all material respects, the financial position of Tesla Motors, Inc. and its subsidiaries at December 31, 2008 and December 31, 2007, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2008 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP

May 29, 2009
San Jose, California

Tesla Motors, Inc.
Consolidated Balance Sheets

(In thousands, except share and per share amounts)	2008	2007
Assets		
Current assets		
Cash and cash equivalents	$ 9,277	$ 17,211
Accounts receivable, net	3,320	59
Inventory	16,650	2,108
Prepaid expenses and other current assets	2,180	2,930
Total current assets	31,427	22,308
Property and equipment, net	18,793	11,998
Restricted cash	1,220	260
Other assets	259	271
Total assets	$ 51,699	$ 34,837
Liabilities, Convertible Preferred Stock and Stockholders' Deficit		
Capital lease obligations, current portion	$ 341	$ 80
Accounts payable	14,184	5,369
Accrued liabilities	11,145	8,512
Deferred revenue	14,246	-
Refundable membership fees	48,019	37,335
Total current liabilities	87,935	51,296
Long term portion of capital lease obligations	868	18
Preferred stock warrant liability	2,074	191
Convertible notes payable	54,528	-
Other long term liabilities	4,810	-
Total liabilities	150,235	51,505
Commitments and contingencies (Note 6 and 14)		
Convertible preferred stock: $0.001 par value; 111,806,077 shares authorized		
Series A Convertible Preferred Stock; issued and outstanding; 7,213,000 shares (Liquidation value; $3,556)	3,549	3,549
Series B Convertible Preferred Stock; issued and outstanding; 17,459,456 shares (Liquidation value; $12,920)	12,899	12,899
Series C Convertible Preferred Stock; issued and outstanding; 35,242,290 shares (Liquidation value; $40,000)	39,789	39,789
Series D Convertible Preferred Stock; issued and outstanding; 18,440,449 shares Liquidation value; $45,000)	44,941	44,941
	101,178	101,178
Stockholders' deficit		
Common stock; $0.001 par value; 150,800,000 authorized; issued and outstanding; 21,031,532 shares as of December 31, 2008 and 18,055,060 shares as of December 31, 2007	21	18
Additional paid-in capital	5,179	4,268
Accumulated deficit	(204,914)	(122,132)
Total stockholders' deficit	(199,714)	(117,846)
Total liabilities, convertible preferred stock and stockholders' deficit	$ 51,699	$ 34,837

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

Tesla Motors, Inc.
Consolidated Statements of Operations

(In thousands)	Years Ended December 31, 2008	2007	2006
Revenue			
Automotive sales	$ 11,284	$ 73	$ -
Sales of zero-emmission vehicle credits	3,458	-	-
Total operating revenue	14,742	73	-
Costs and Expenses			
Cost of sales	15,883	9	-
Research and development	53,714	62,753	24,996
General and administrative	15,900	12,581	3,296
Sales and marketing	7,749	4,663	2,140
Total costs and expenses	93,246	80,006	30,431
Loss from operations	(78,504)	(79,933)	(30,431)
Interest income (expense), net	(3,218)	1,749	515
Other income (loss), net	(963)	137	59
Loss before income taxes	(82,685)	(78,047)	(29,857)
Provision for income taxes	97	110	100
Net loss	$ (82,782)	$ (78,157)	$ (29,957)

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

Tesla Motors, Inc.
Consolidated Statements of Convertible Preferred Stock and Stockholders' Deficit

(In thousands, except share and per share amounts)	Convertible Preferred Stock Shares	Convertible Preferred Stock Amount	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
Balance at December 31, 2005	32,672,456	$ 20,384	8,925,000	$ 9	$ 14	$ (14,018)	$ (13,995)
Issuance of common stock upon exercise of stock options	-	-	81,957	-	6	-	6
Issuance of Series C convertible preferred stock in June 2006 (inclusive of conversion of note payable) at $1.135 per share, net of issuance cost of $211	35,242,290	39,789	-	-	-	-	-
Stock-based compensation	-	-	-	-	23	-	23
Net loss	-	-	-	-	-	(29,957)	(29,957)
Balance at December 31, 2006	67,914,746	$ 60,173	9,006,957	$ 9	$ 43	$ (43,975)	$ (43,923)
Issuance of Series D convertible preferred stock in May 2007 at $2.4403 per share, net of issuance costs of $58	18,440,449	44,941	-	-	-	-	-
Series A converted to Common stock	(8,000,000)	(3,936)	8,000,000	8	3,928	-	3,936
Issuance of common stock upon exercise of stock options	-	-	1,048,103	1	99	-	100
Stock-based compensation	-	-	-	-	198	-	198
Net loss for year 2007	-	-	-	-	-	(78,157)	(78,157)
Balance at December 31, 2007	78,355,195	$ 101,178	18,055,060	$ 18	$ 4,268	$ (122,132)	$ (117,846)
Issuance of common stock upon exercise of stock options	-	-	2,946,472	3	453	-	456
Issuance of common stock to consultant	-	-	30,000	-	21	-	21
Stock-based compensation	-	-	-	-	437	-	437
Net loss for year 2008	-	-	-	-	-	(82,782)	(82,782)
Balance at December 31, 2008	78,355,195	$ 101,178	21,031,532	$ 21	$ 5,179	$ (204,914)	$ (199,714)

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

Tesla Motors, Inc.
Consolidated Statements of Cash Flows

(In thousands)	2008	2007	2006
Cash flows from operating activities			
Net loss	$ (82,782)	$ (78,157)	$ (29,957)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	4,157	2,895	515
Change in fair value of preferred stock warrant liability	2,800	(36)	(196)
Gain on extinguishment of notes and warrants	(1,245)	-	-
Stock-based compensation	437	198	23
Loss on abandonment of fixed assets	-	2,421	-
Interest on convertible notes payable	3,692	-	411
Changes in operating assets and liabilities			
Accounts receivable	(3,261)	(59)	-
Inventory	(14,542)	(2,108)	-
Prepaid expenses and other current assets	750	(1,864)	(819)
Other assets	12	(64)	(27)
Accounts payable	8,815	523	2,242
Accrued liabilities	2,633	7,572	2,175
Other long term liabilities	1,192	-	-
Deferred revenue	14,246	-	-
Refundable membership fees	10,684	15,230	22,105
Net cash used in operating activities	(52,412)	(53,469)	(3,428)
Cash flows from investing activities			
Purchases of property and equipment, net of capital creditors	(9,630)	(9,802)	(6,505)
Increase (decrease) in restricted cash deposits for leases	(960)	40	(300)
Net cash used in investing activities	(10,590)	(9,762)	(6,805)
Cash flows from financing activities			
Proceeds from issuance of Series D convertible preferred stock, net issuance cost of $83	-	44,941	-
Proceeds from issuance of Series C convertible preferred stock, net issuance cost of $211	-	-	36,801
Principal payments on capital leases and other debt	(191)	-	-
Proceeds from issuance of convertible notes payable and warrants	54,782	-	3,000
Proceeds from issuance of common stock to consultant	21	-	-
Proceeds from exercise of stock options	456	100	6
Net cash provided by financing activities	55,068	45,041	39,807
Net increase (decrease) in cash and cash equivalents	(7,934)	(18,190)	29,574
Cash and cash equivalents at beginning of period	17,211	35,401	5,827
Cash and cash equivalents at end of period	$ 9,277	$ 17,211	$ 35,401
Supplemental noncash investing and financing activities			
Conversion of promissory notes to Series C convertible preferred stock	-	-	2,988
Conversion of Series A preferred stock to common stock	-	3,938	-
Exchange of convertible notes payable	16,751	-	-
Interest paid	41	9	-
Property, plant and equipment acquired under capital lease	1,322	-	-

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

Tesla Motors, Inc.
Notes to Consolidated Financial Statements
December 31, 2008 and 2007 and for the three years ended December 31, 2008

1. The Company

Tesla Motors, Inc. (the "Company") was incorporated in the state of Delaware on July 1, 2003. The Company is engaged in the development of high-performance electric sports cars. The Company began selling its electric sports cars in the second half of 2008 and is no longer considered a development stage company. The Company also earns revenue from the sale of zero-emission vehicle ('ZEV') credits granted by certain states. As the Company has no ability to utilize these credits, they are sold to third parties. Prior to the current reporting period, the Company had devoted substantially all of its efforts to business planning, research and product development, recruiting management and technical staff, acquiring operating assets and raising capital and was considered a development stage company as defined by ("SFAS") No. 7, "Accounting and Reporting by Development Stage Enterprises."

Since inception the Company has incurred significant losses and has used approximately $121 million of cash in operations. As of December 31, 2008, the Company had approximately $9.3 million in cash and cash equivalents. Subsequent to December 31, 2008, the Company received proceeds from convertible notes of approximately $25 million (Note 15) and $50 million through the issuance of Series E Preferred Stock (Note 15). The Company is selling its Roadster automobile and is developing new models, which it believes will ultimately lead to profitable operations and positive cash flows. To the extent the Company does not meet its planned sales volumes or future product releases or the Company's existing cash and cash equivalents balances are insufficient to fund its future activities, the Company will need to raise additional funds. The Company cannot be certain that additional financing, if needed, will be available at terms satisfactory to the Company, or at all. These financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

On December 15, 2008, the Company filed an application with the United States Department of Energy for a financing package, that if approved, could result in a change in the order of seniority of the Company's shareholders and creditors in the event of a liquidation or event of default.

2. Summary of Significant Accounting Policies

Basis of Consolidation
The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries located in the United Kingdom and Taiwan. All significant inter-company transactions and balances have been eliminated in consolidation.

Reclassification
Certain prior period amounts have been reclassified to conform to the current period presentation.

Use of Estimates
The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements, and reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Fair Value of Financial Instruments
The carrying value of the Company's cash & cash equivalents, accounts receivable, accounts payable, accruals and deposits approximates their fair value. The Company considers its investments in money market funds, shown as part of cash and cash equivalents as Level 1 instruments in accordance with Statement of Financial Accounting Standards No. 157, "Fair Value Measurement" ("SFAS No. 157") as they have a quoted price in active markets for identical assets.

Revenue Recognition
Automotive sales consist primarily of revenue earned from the sale of vehicles. Vehicle sales are recorded when the title and risks and rewards of ownership have passed, which is generally when the vehicle is released to the customer or the carrier responsible for transporting vehicles to the customer. All incentives, allowances, and rebates related to vehicles sold are recognized as reductions to revenue. Accruals are provided for anticipated warranty expenses at the time the associated revenue is recognized.

The Company has a contractual arrangement to sell ZEV credits to a third party. Revenue from the transfer of ZEV credits is only recognized when such credits are transferred to the contracting party's Air Resource Board credit account.

The Company performs research and development services for third parties. Research and development revenue is recognized as the services are performed, agreed upon milestones are achieved and customer acceptance, if required, is received from the customer.

Deferred Revenue
At December 31, 2008, the Company has recorded delivered automobiles to customers in finished goods where significant performance obligations still exist. These automobiles were paid for in full with the amounts recorded as deferred revenue. In addition, the Company also has not recognized any revenue for the year ended December 31, 2008 related to a research and development agreement as certain revenue recognition criteria were not met. The Company has recorded deferred revenue of $10.2 million related to this agreement.

Freestanding Preferred Stock Warrants
The Company accounts for freestanding warrants and other similar instruments related to shares that are redeemable in accordance with Statement of Financial accounting Standards No. 150 ("SFAS No. 150"). Under FASB Staff Position 150-5 ("FSP 150-5"), *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable*. The freestanding warrants exercisable into the Company's convertible preferred stock are classified as liabilities on its consolidated balance sheets. The warrants are subject to re-measurement at each balance sheet date and any change in fair value is recognized as a component of other income (loss), net. The Company will continue to adjust the liability for changes in fair value until the earlier of the exercise or expiration of the warrants.

Cash and Cash Equivalents
All highly liquid investments with an original or remaining maturity of three months or less at the date of purchase are considered to be cash equivalents. The Company deposits excess cash primarily in money market accounts and higher rated instruments which management believes are subject to minimal credit and market risk.

Restricted cash and deposits
The Company maintains certain cash amounts restricted as to withdrawal or use. The company maintained a balance of approximately $1.2 million and $260,000 at December 31, 2008 and 2007, respectively. The restricted cash represents security deposits related to lease agreements.

Accounts Receivable and Allowance for Doubtful Accounts
Accounts receivable primarily include amounts related to the performance of research and development services and ZEV credits at December 31, 2008 and from the performance of research and development services at December 31, 2007. The Company does not record accounts receivable for automotive sales as all balances are collected upon delivery of the vehicle. The Company estimates the collectibility of its accounts receivable based on a combination of factors. In circumstances where the Company is aware of a specific customer's inability to meets its financial obligations to the Company, the Company provides an allowance against amounts to reduce the net recognized receivable to the amount it reasonably believes will be collected. As of December 31, 2008 and 2007, the Company has determined that it does not require an allowance for doubtful accounts.

Concentration of Credit Risk
Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash, cash equivalents, and accounts receivable. The Company's cash and cash equivalents are primarily invested in deposits with high credit quality financial institutions in the United States. At times, these deposits and securities may be in excess of insured limits. To date, the Company has not experienced any losses on its deposits of cash and cash equivalents. In 2008, the Company's accounts receivable are derived from automotive manufacturing customers located primarily in North America and Europe, the performance of research and development services and the sale of ZEV credits. In 2007, the Company's accounts receivable are derived from automotive manufacturing customers located in North America, and the performance of engineering services. The Company performs credit evaluations of its customers' financial condition, and, generally, requires no collateral.

Inventories and Inventory Valuation
Inventories are stated at the lower of cost or market. Cost is computed using standard cost, which approximates actual cost, on a first-in, first-out basis. The Company provides inventory write-downs based on excess and obsolete inventories determined primarily by future demand forecasts. The Company also adjusts the carrying value of its inventories when it believes that the net realizable value is less than the carrying value. These write downs are measured as the difference between the cost of the inventory (including estimated costs to complete) and estimated selling prices. The provisions recorded prior to commencement of sales of the roadster automobile were recorded as a charge to research and development. Upon commencement of sales, charges were recorded as a component of cost of goods sold. During 2007, the Company recorded provisions of $807,000 to research and development. During 2008, the Company recorded a provision of $3.7 million to research and development and $634,000 to cost of goods sold.

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.

Adverse Purchase Commitments
To the extent future inventory purchases under non-cancellable purchase orders are for excess or obsolete parts or the related inventory is deemed to be in excess of its net realizable value, the Company records an accrual for adverse purchase commitments. The charges recorded prior to commencement of sales of the roadster automobile are recorded as a charge to research and development. Upon commencement of sales, charges are recorded as a component of cost of goods sold. During 2007, the Company recorded provisions of $1.5 million to research and development. During 2008, the Company recorded a provision of $1.0 million to research and development and $366,000 to cost of goods sold.

Property and Equipment
Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally three to seven years. Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful lives or the term of the related lease. Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations. Maintenance and repair expenditures are expensed as incurred.

Long-Lived Assets
The Company evaluates its long-lived assets for indicators of possible impairment when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Impairment exists if the carrying amounts of such assets exceed the estimates of future net undiscounted cash flows expected to be generated by such assets. Should impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset's estimated fair value.

Research and Development Costs
Research and development costs are expensed as incurred. Research and development expenses consist primarily of payroll and benefits of those employees engaged in research, design and development activities; costs related to design tools, license expenses related to intellectual property, supplies and services, depreciation and other occupancy costs.

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 basis 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.

Stock-Based Compensation

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements in accordance with the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB No. 25"), and related interpretations, and followed the disclosure provisions of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* ("SFAS No. 123"). Under APB No. 25, compensation expense for an option is based on the difference, if any, on the date of the grant, between the fair value of a company's common stock and the exercise price of the option. Employee stock-based compensation determined under APB No. 25 is recognized using the multiple option method prescribed by the Financial Accounting Standards Board Interpretation No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans* ("FIN 28"), over the option vesting period.

Effective January 1, 2006, the Company adopted the fair value provisions of Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment* ("SFAS No. 123R"), which supersedes its previous accounting under APB No. 25. SFAS No. 123R requires the recognition of compensation expense, using a fair-value based method, for costs related to all share-based payments including stock options. SFAS No. 123R requires companies to estimate the fair value of share-based payment awards on the grant date using an option pricing model. The Company adopted SFAS No. 123R using the prospective transition method, which requires, that for nonpublic entities that used the minimum value method for either pro forma or financial statement recognition purposes, SFAS No. 123R was applied to option grants issued on and after the required effective date. For unvested options granted prior to the SFAS No. 123R, the Company continues to recognize compensation expense under the intrinsic value method of APB No. 25. In addition, the Company continues to amortize those awards valued prior to January 1, 2006 utilizing an accelerated amortization schedule, while it expenses all options granted or modified after January 1, 2006 on a straight-line basis.

The Company has elected to use the "with and without" approach as described in EITF Topic No. D-32 in determining the order in which tax attributes are utilized. As a result, the Company will only recognize a tax benefit from stock-based awards in additional paid-in capital if an incremental tax benefit is realized after all other tax attributes currently available to the Company have been utilized. In addition, the Company has elected to account for the indirect effects of stock-based awards on other tax attributes, such as the research tax credit, through its statement of operations.

The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123, EITF Issue No. 96-18, Accounting for Equity Instruments that are Issued to Other than Employees for Acquiring, or in Conjunction with Selling, Goods or Services, and FIN 28.

Foreign Currency Translation
The functional currency of the Company's operations in the U.K. and Taiwan is the U.S. Dollar. For these foreign operations, assets and liabilities are re-measured at the period-end or historical rates as appropriate. Revenues and expenses are re-measured at average monthly rates. Currency transaction gains and losses are recognized in current operations and have not been significant for any period presented.

Comprehensive Loss
Comprehensive loss includes all changes in equity (net assets) during a period from non-owner sources. Through December 31, 2008, there are no components of comprehensive loss which are not included in net loss and, therefore, no separate statement of comprehensive loss has been presented.

Recent Accounting Pronouncements
In June 2006, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes - An Interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, Accounting for Income Taxes, by defining the minimum recognition threshold a tax position is required to meet before being recognized in our financial statements. In December 2008, the FASB issued FSP FIN 48-3 that defers the effective date for adoption of FIN 48 to fiscal years beginning after December 15, 2008 for nonpublic enterprises. The Company will adopt FIN 48 commencing with the fiscal year 2009 annual financial statements. The Company is currently evaluating the effect that the adoption of FIN 48 will have on its financial position and results of operations.

In December 2007, the FASB issued Statement No. 141 (revised), "Business Combinations" ("SFAS 141(R)"). The standard changes the accounting for business combinations including the measurement of acquirer shares issued in consideration for a business combination, the recognition of contingent consideration, the accounting for pre-acquisition gain and loss contingencies, the recognition of capitalized in-process research and development, the accounting for acquisition-related restructuring cost accruals, the treatment of acquisition related transaction costs and the recognition of changes in the acquirer's income tax valuation allowance. SFAS 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company will assess the impact of SFAS 141(R) if and when a future acquisition occurs.

In December 2007, the FASB issued Statement No. 160, "Non-controlling Interests in Consolidated Financial Statements, an amendment of ARB No. 51" ("SFAS 160"). The standard changes the accounting for non-controlling (minority) interests in consolidated financial statements including the requirements to classify non-controlling interests as a component of consolidated stockholders' equity, and the elimination of "minority interest" accounting in results of operations with earnings attributable to non-controlling interests reported as part of consolidated earnings. Additionally, SFAS 160 revises the accounting for both increases and decreases in a parent's controlling ownership interest. SFAS 160 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. The Company is currently evaluating the impact of the pending adoption of SFAS 160 on its consolidated financial statements.

In March 2008, the FASB issued Statement of Financial Accounting Standard ("SFAS") No. 161, "Disclosures about Derivative Instruments and Hedging Activities." This standard is intended to improve financial reporting by requiring transparency about the location and amounts of derivative instruments in an entity's financial statements; how derivative instruments and related hedged items are accounted for under SFAS No 133; and how derivative instruments and related hedged items affect its financial position, financial performance and cash flows. This Statement is effective

for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 161 on its condensed consolidated results of operations and financial condition.

In May 2008, the FASB issued FSP Accounting Principles Board (APB) Opinion 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" (FSP APB 14-1). FSP APB 14-1 requires recognition of both the liability and equity components of convertible debt instruments with cash settlement features. The debt component is required to be recognized at the fair value of a similar instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the note and the fair value of the liability. FSP APB 14-1 also requires an accretion of the resulting debt discount over the expected life of the debt. Retrospective application to all periods presented is required. This standard is effective for the Company beginning in the first quarter of fiscal year 2009. The Company is currently evaluating the impact of adopting of FSP APB 14-1 on its consolidated results of operations, financial condition and cash flows.

3. Balance Sheet Components

Inventory *(In thousands)*	**2008**	**2007**
Raw material	$ 3,166	$ 2,008
Work in process	7,732	100
Finished Goods	5,752	-
	$ 16,650	$ 2,108

Property and Equipment, net *(In thousands)*	**2008**	**2007**
Computer equipment and software	$ 5,476	$ 4,764
Office furniture and equipment	4,682	3,255
Tooling	11,580	5,384
Leasehold improvements	3,881	1,793
	25,619	15,196
Less: Accumulated depreciation and amortization	(6,826)	(3,198)
	$ 18,793	$ 11,998

Accrued Liabilities
(In thousands)

	2008	2007
Provision for adverse purchase commitments	$ 2,173	$ 1,544
Research and development	1,972	1,236
Tooling and other fixed assets	1,234	-
Inventory	1,201	-
Payroll and related	1,063	1,156
Professional services	515	2,255
Income tax payable	205	153
Other	2,782	2,168
	$ 11,145	$ 8,512

Deferred Revenue
(In thousands)

	2008	2007
Development revenue	$ 10,173	$ -
Zero-emission vehicle credits	500	-
Automotive sales	3,573	-
	$ 14,246	$ -

Other Long Term Liabilities
(In thousands)

	2008	2007
Warranty accrual	$ 858	$ -
Interest on notes payable	3,618	-
Deferred rent liability	334	-
	$ 4,810	$ -

4. Refundable membership fees

During the years ended December 31, 2008 and December 31, 2007, the Company received membership fees from subscribers for purposes of securing future vehicle delivery. The membership fees are credited against the purchase costs of a Tesla Roadster. Each of the membership fees is non-interest bearing and is fully refundable up to and including the delivery day of the vehicle. Amounts received by the Company as refundable membership fees are not restricted as to their use by the Company.

5. Related Party Transactions

In December 2006, the Company issued a promissory note of $40,000 to an executive. The note accrued interest at 5% per annum. The note together with the interest accrued was forgiven in December 2007.

6. License Agreement

In May 2004, the Company entered into a License Agreement (the "Agreement") with AC Propulsion, Inc. (ACP) and obtained a nonexclusive, nontransferable, perpetual license to ACP's patented and proprietary designs, techniques and methods that relate to electric vehicle propulsion and integration.

As consideration under the Agreement, the Company paid a license fee of $500,000 in cash which was charged to research and development expense as technological feasibility of our product had not been established. The Company also agreed to purchase parts and services from ACP totaling a minimum of $230,000 over a two year period. As of December 31, 2008, the Company had met the minimum purchase requirements.

In addition, ACP will be paid a royalty on all vehicle sales through December 31, 2014. The royalty will equal 0.25% of the vehicle's manufacturer suggested retail price for every qualifying vehicle sold. The Company has the right to pay a lump sum equal to $5 million, minus royalties paid to date, in lieu of all future royalties at any time. During 2008, the Company recorded royalty expenses of $28,000 which were recorded through a charge to cost of goods sold.

7. Convertible Preferred Stock

In May 2006, the Company completed financing totaling approximately $40 million through the issuance of 35,242,290 shares of Series C Preferred Stock at $1.135 per share. In connection with this financing, the Company converted warrants issued with the March 2006 convertible notes payable (See Note 8) to warrants to purchase 650,882 shares of Series C Preferred Stock (See Note 9). The warrants are exercisable at $1.135 per share on or before March 30, 2011.

In May 2007, the Company completed financing totaling approximately $45 million through the issuance of 18,440,449 shares of Series D Preferred Stock at $2.4403 per share.

In November 2007, 8,000,000 shares of Series A Preferred Stock valued at $0.493 per share were converted into common stock at the ratio of 1:1.

The following table summarizes information related to Convertible Preferred Stock at December 31, 2008:

(In thousands except share and per share amounts)	Par Value	Share Price	Authorized	Issued and Outstanding	Liquidation Preference	Proceeds, Net
Series A	$ 0.001	$ 0.493	7,213,000	7,213,000	$ 3,556	$ 3,549 *
Series B	$ 0.001	$ 0.740	17,459,456	17,459,456	12,920	12,899
Series C	$ 0.001	$ 1.135	35,893,172	35,242,290	40,000	39,789
Series D	$ 0.001	$ 2.440	51,240,449	18,440,449	45,000	44,941
Total			111,806,077	78,355,195	$ 101,476	$ 101,178

* Net of $3.9 million conversion of Series A preferred stock to common stock.

Dividends
Holders of Series A, B, C and D Preferred Stock are entitled to receive non-cumulative dividends at the per annum rate of 6% of the original issue price of such stock in the order of their preference, when and if declared by the Board of Directors. No dividends on the Preferred Stock or Common Stock have been declared by the Board from inception through December 31, 2008.

Liquidation
Preferred shareholders are entitled to receive, prior and in preference to any distribution of assets or surplus funds of the Company to any holders of common stock, an amount equal to all declared but unpaid dividends for preferred stock.

In the event of any liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, the Series A, B, C, and D preferred shareholders are entitled to liquidation preferences of $0.493, $0.740, $1.135 and $2.440, respectively, per share, plus any accrued dividends.

If the assets and funds legally available for distribution among the holders of preferred stock are insufficient to permit payment in full to each of the preferred shareholders, then the entire assets and funds of the Company legally available for distribution shall be distributed first to the holders of Series D, then ratably to the holders of Series C, then ratably to the holders of Series B, then ratably to the holders of Series A. After payment of the full liquidation preference to the preferred stock, the remaining assets of the Company shall be ratably distributed to the holders of common stock and preferred stock on an as-if-converted basis.

The consolidation or merger of the Company, the sale of all or substantially all of its assets or the change of control shall be deemed to be a liquidation.

Redemption
The Series A, Series B, Series C and Series D Convertible Preferred Stock are not redeemable at the option of the holders.

Conversion
Each share of Preferred Stock may be converted, at the option of the holder, at any time into Common Stock as is determined by dividing the applicable original issue price by the conversion price as adjusted for certain dilutive issuances, splits and combinations. The original issuance prices of Series A, Series B, Series C and Series D Convertible Preferred stock were $0.49, $0.74, $1.135, and $2.44, respectively. As of December 31, 2008, the applicable conversion prices of Series A, Series B, Series C and Series D Convertible Preferred stock were $0.49, $0.74, $1.08, and $2.44, respectively, as adjusted for certain dilutive issuances. All outstanding shares of Preferred Stock will be automatically converted into Common Stock at the then effective conversion price upon the earlier of (a) the Company's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, in which the Company receives in aggregate cash proceeds of no less than $50 million and with a pre-public offering market capitalization of at least $250 million and (b) the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Preferred Stock voting together as a single class on an as-converted basis.

Voting Rights
The holder of each share of Preferred Stock has the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and such holder has full voting rights and powers equal to the voting rights and powers of the holders of Common Stock.

8. Convertible Notes Payable

On March 30, 2006, the Company entered into an agreement with certain lenders under which the Company was entitled to draw up to $5.0 million in exchange for warrants and secured convertible notes payable. The Company received $3.0 million for the issuance of the notes and warrants on March 30, 2006. The notes were interest bearing at 8% per annum and were secured by a first priority security interest in all personal property of the Company. In May 2006, the principal amount and accrued interest of the notes totaling $3.0 million were subsequently converted into 2,632,627 shares of Series C Preferred Stock at a conversion price of $1.135 per share. The warrants are exercisable at $1.135 per share to purchase 650,822 Series C Preferred Stock on or before March 30, 2011. The Company's right to draw down the remaining $2.0 million under the agreement expired upon the closing of the Series C Preferred Stock financing in May 2006.

In February 2008, the Company received proceeds of $40.3 million through the issuance of convertible notes payable and warrants. These convertible notes payable are secured by all the Company's personal and intellectual property, and accrue interest at a rate of 10% per annum. The principal and related interest are due and payable on December 31, 2010, unless earlier converted into preferred stock of the Company. The convertible notes payable are convertible into either the securities issuable in a subsequent round of financing at the per share price of such financing, or into Series D Preferred Stock at a per share price of $2.44, at the election of the note holder.

In connection with the February 2008 Convertible notes, the Company issued warrants to purchase 8,246,914 shares of either Series D Preferred Stock (at a price of $2.44 per share) or the securities issuable in a subsequent round of financing (at the per share price of such securities). The warrants are exercisable at $2.44 per share on or before December 31, 2010 or an initial public offering, whichever comes first.

In December 2008, the Company received proceeds of $14.5 million through the issuance of additional convertible notes payable. These convertible notes payable are secured by all the Company's personal and intellectual property, and accrue interest at a rate of 10% per annum. The principal and related interest are due and payable on December 31, 2010, unless earlier converted into preferred stock of the Company upon the closing of a subsequent round of financing. The conversion price of these convertible notes is equal to 40% of the price of shares in the subsequent round of financing. Investors who participated in the February 2008 note offering were eligible to exchange the convertible notes and warrants purchased in February 2008 for these convertible notes if certain conditions were met by the final closing of the notes in March 2009. Under these terms, the February 2008 Note holders exchanged $16.8 million of the original issued principal amount for $16.8 million of principal amount of the new convertible notes. See Note 9 "Warrants for Preferred Stock," for information about the warrants that were also exchanged. See Note 15, "Subsequent Events" for information about the February 2009 issuance and March 2009 issuance of additional convertible notes payable.

In May 2009, the Company completed a qualified financing in which $50.0 million of proceeds was received. See Note 15, "Subsequent Events" for information about the May 2009 Series E financing. Upon closing, the convertible notes outstanding were converted into Shares of Series E Preferred Stock and warrants.

9. Warrants for Preferred Stock

In March 2006, the Company issued warrants to purchase 650,882 shares of Series C Preferred stock in conjunction with the issuance of the convertible notes (See Note 8). The warrants are exercisable at $1.135 per share on or before March 30, 2011. The Company calculated the fair value of each warrant using the Black-Scholes option pricing model with the following assumptions: volatility of 62.5%, term of five years, risk-free interest rate of 4.82% and dividend yield of 0%. The Company recorded the fair value of the warrants of $423,000 as a discount to the carrying value of the convertible notes. At December 31, 2008, the fair value of these warrants was $334,000 and a charge of $144,000 was recorded in other income (loss).

In February 2008, the Company issued warrants with the February 2008 convertible notes payable (See Note 8) to purchase 8,246,914 shares of either Series D Preferred Stock (at a price of $2.44 per share) or the securities issuable in a subsequent round of financing (at the per share price of such securities). The warrants are exercisable at $2.44 per share on or before December 31, 2010 or an initial public offering, whichever comes first. The Company calculated the fair value of each warrant using the option pricing model with the following assumptions: volatility of 60%, term of 0.7 years, risk-free interest rate of 1.98% and dividend yield of 0%. The Company recorded the fair value of the warrants of $329,000 and accounted for them as a discount to the carrying value of the convertible notes. On December 24, 2008, the fair value of the 8,246,914 warrants was $3.0 million, resulting in a charge to other income (loss) of $2.7 million. Also on December 24, 2008, 3,439,305 of these warrants were extinguished as a result of the election of certain February 2008 Note holders to exchange the warrants for the December 2008 convertible notes (See Note 8), resulting in a gain of $1.3 million recorded in other income (loss), and 4,807,609 of these warrants outstanding at December 31, 2008. At December 31, 2008, the fair value of the remaining warrants was $1.7 million.

In accordance with FSP 150-5, the Company has classified its preferred stock warrants as a liability and adjusts the warrants to their fair values at the end of each period with changes recorded as other income (loss), net.

10. Common Stock

On February 14, 2008, the Company increased its authorized shares capital to 262,606,077 shares with a par value of $0.001 per share. The authorized shares capital consists of 150,800,000 Common Stock and 111,806,077 Preferred Stock of which 7,213,000 shares, 17,459,456 shares, 35,893,172 shares and 51,240,449 shares have been designated as Series A, Series B, series C and Series D Preferred Stock.

In November 2007, the Chairman converted 8,000,000 shares of Series A preferred stock to 8,000,000 shares of common stock.

Early Exercise of Employee Options
Stock options granted under the Company's stock option plan provide certain employee option holders the right to elect to exercise unvested options in exchange for shares of restricted common stock. Unvested shares, in the amounts of 277,322 and 920,748 at December 31, 2008 and 2007, respectively, were subject to a repurchase right held by the Company at the original issuance price in the event the optionees' employment is terminated either voluntarily or involuntarily. For exercises of employee options, this right generally lapses as to 25% of the shares subject to the option on the first anniversary of the vesting start date and as to 1/48th of the shares monthly thereafter. These repurchase terms are considered to be a forfeiture provision and do not result in

variable accounting. The restricted shares issued upon early exercise of stock options are legally issued and outstanding and have been reflected in stockholders' deficit. The Company treats cash received from employees for exercise of unvested options as a refundable deposit shown as a liability in its consolidated financial statements. As of December 31, 2008 and 2007, the Company included cash received for early exercise of options of $63,957 and $191,264, respectively, in accrued liabilities. Amounts from accrued liabilities are transferred into common stock and additional paid-in capital as the shares vest.

11. Equity Incentive Plans

In July 2003, the Company adopted the 2003 Equity Incentive Plan (the "Plan"). The Plan provides for the granting of stock options and stock purchase rights to employees, directors and consultants of the Company. Options granted under the Plan may be either incentive options or nonqualified stock options. Incentive stock options ("ISO") may be granted only to Company employees including officers and directors. Nonqualified stock options ("NSO") and stock purchase rights may be granted to Company employees and consultants. On May 10, 2006, the Company increased the number of shares reserved for issuance under the Plan from 5,500,000 shares to 10,638,740 shares of Common Stock. On August 28, 2007, the Company increased the number of shares reserved for issuance under the Plan from 10,638,740 shares to 13,138,740 shares of Common Stock. On November 30, 2007, the Company further increased the number of reserved for issuance under the Plan from 13,138,740 shares to 17,138,740 shares of Common Stock.

Options under the Plan may be granted at prices no less than 85% of the estimated fair value of the shares on the date of grant as determined by the Board of Directors, provided, however, that (i) the exercise price of an ISO and NSO shall not be less than 100% or 85% of the estimated fair value of the shares on the date of grant, respectively, and (ii) the exercise price of an ISO and NSO granted to a 10% shareholder shall not be less than 110% of the estimated fair value of the shares on the date of grant, respectively. The fair value of the shares is determined by the Board of Directors on the date of grants. Options become exercisable at the rate of no less than 20% per year over five years from the date of grants, except for options granted to officers, directors, and consultants which typically become exercisable at the rate of no less than 25% after one year and vest monthly thereafter for the next 36 months.

The following table summarized option activity under the Plan:

	Shares Available for Grant	Outstanding Options: Number of Options	Outstanding Options: Weighted Average Exercise Price
Balance, December 31, 2005	1,453,500	4,021,500	$ 0.06
Additional options reserved	5,138,740	-	-
Granted	(2,986,500)	2,986,500	0.15
Exercised	-	(163,415)	0.09
Canceled	230,000	(230,000)	0.10
Balance, December 31, 2006	3,835,740	6,614,585	0.11
Additional options reserved	6,500,000	-	-
Repurchased restricted stock	70,000	-	0.24
Granted	(9,571,625)	9,571,625	0.55
Exercised	-	(1,957,392)	0.15
Canceled	1,389,668	(1,389,668)	0.32
Balance, December 31, 2007	2,223,783	12,839,150	0.41
Additional options reserved	-	-	-
Repurchased restricted stock	375,276	-	0.22
Granted	(4,338,000)	4,338,000	0.90
Exercised	-	(2,200,961)	0.12
Canceled	6,388,269	(6,388,269)	0.54
Balance, December 31, 2008	4,649,328	8,587,900	$ 0.63

	Options Outstanding at December 31, 2008			Options Exercisable at December 31, 2008		
Range of Exercise Price	Number	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price
$0.05 - $0.90	8,587,900	5.91	$ 0.63	7,259,850	5.82	$ 0.58

The aggregate intrinsic value represents the total pretax intrinsic value (i.e., the difference between the Company's stock price on the last day of its fourth quarter of 2008 and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on December 31, 2008. The aggregate intrinsic value of options outstanding at December 31, 2008 is $1.8 million. The intrinsic value of options exercisable is $1.3 million, and the intrinsic value of vested options is $1.7 million. The total intrinsic value of options exercised was $1.4 million, $229,000, and $7,000 for the years ended December 31, 2008, 2007 and 2006, respectively.

Included in the above table are non-employee stock options granted in the years ended December 31, 2008, 2007, and 2006 of 10,000, 760,000, and 20,000, respectively. The Company had non-employee stock options outstanding of 160,000, 500,000 and 40,000 at weighted average exercise prices of $0.21, $0.42 and $0.075 at December 31, 2008, 2007, and 2006, respectively. The non-employee options outstanding had a weighted average remaining contractual term of 5.08 years at December 31, 2008.

In addition, not included in the table were shares of non-employee stock options granted outside the 2003 Equity Incentive Plan in the years December 31, 2008 and 2007 of 100,000 and 850,000, respectively. The Company had 200,000 non-employee Common Stock options outstanding at a weighted average exercise price of $0.60 at December 31, 2008 and 2007, respectively. Of this amount, 75,000 shares were vested, 200,000 options were outstanding and 100,000 options were cancelled as of December 31, 2008. These non-employee options outstanding were at weighted average exercise price of $0.60 at December 31, 2008 and had a weighted average remaining contractual term of 8.4 years at December 31, 2008.

In October 2008, the Company modified the vesting of 1,530,169 stock options granted during the years ended December 31, 2008 and 2007. This transaction was accounted for as a modification in accordance with SFAS No. 123R and did not have a material impact on the Company's consolidated balance sheet, statements of operations or cash flows.

Adoption of SFAS No. 123R

The Company adopted SFAS No. 123R on January 1, 2006. Under SFAS No. 123R, the Company estimated the fair value of each option award on the grant date using the Black-Scholes option valuation model and the weighted average assumptions noted in the following table.

	Year Ended December 31, 2008	Year Ended December 31, 2007	Year Ended December 31, 2006
Risk-free interest rate	2.18%	4.43%	4.84%
Expected term (in years)	4.58	4.58	4.6
Expected volatility	53%	52%	54%
Dividend yield	0%	0%	0%

The Company based expected volatility on the historical volatility of a peer group of publicly traded entities. The expected term of options was determined based on the provisions of Staff Accounting Bulletin Nos. 107 and 110. The risk-free interest rate for the expected term of the option is based on the U.S. Treasury Constant Maturity rate as of the date of grant.

SFAS No. 123R requires nonpublic companies that used the minimum value method under SFAS No. 123 to apply the prospective transition method of SFAS No. 123R. Prior to adoption of SFAS No. 123R, the Company used the minimum value method and it therefore has not restated its financial results for prior periods. Under the prospective method, stock-based compensation expense for the year ended December 31, 2006 includes compensation expense for (i) all new stock-based compensation awards granted after January 1, 2006 based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R and (ii) awards outstanding as of December 31, 2005 that were modified after the adoption of SFAS No. 123R. Unmodified awards granted prior to, but not vested as of December 31, 2005 continue to be accounted for under APB No. 25

The Company calculated employee stock-based compensation expense recognized in the year ended December 31, 2008 based on awards ultimately expected to vest and reduced it for estimated forfeitures. SFAS No. 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The following table summarizes the consolidated stock-based compensation expense by line items in the consolidated statement of operations:

	Year Ended December 31, 2008	Year Ended December 31, 2007	Year Ended December 31, 2006
Cost of Sales	$ 26	$ -	$ -
Research and development	125	95	17
Sales and Marketing	22	20	3
General and administrative	264	83	3
Total stock-based compensation expense	$ 437	$ 198	$ 23

Consolidated net cash proceeds from option exercises were $272,000 for the year ended December 31, 2008. The Company realized no income tax benefit from stock option exercises during the year ended December 31, 2008 due to recurring losses and valuation allowances. As required, the Company presents excess tax benefits from the exercise of stock options, if any, as financing cash flows rather than operating cash flows.

At December 31, 2008, 2007 and 2006, the Company had $979,000, $1,061,000 and $206,000 respectively of total unrecognized compensation expense under SFAS No. 123R, net of estimated forfeitures, related to stock option plans that will be recognized over a weighted-average period of 3.22 years.

Non-employee Stock Options

During the years ended December 31, 2008 and 2007, the Company granted options to purchase 110,000 and 860,000 shares, respectively, of Common Stock to non-employees at an exercise price ranging from $0.20 to $0.90 and with a contractual term ranging from seven to ten years. The Company determined the estimated fair value of these options on the grant date using the Black Scholes option pricing model and the following assumptions for the periods ending December 31, 2008 and 2007, respectively: dividend yield of 0% and 0%, expected volatility of 53% and 55%, risk-free interest rate of 4.10% and 4.43% and contractual life ranging from seven to ten years. The Company accounts for stock options, which vest over the service period, using the variable accounting model and re-measures them to their estimated fair value each accounting period. Compensation expense related to options granted to non-employees was $44,000, $60,000, and $0 for the years ended December 31, 2008, 2007, and 2006, respectively.

12. Income Taxes

No provision for U.S. income taxes has been made due to cumulative losses since the commencement of operations.

A provision for income taxes of $97,000, $110,000 and $100,000 has been recognized for the year ended December 31, 2008, 2007 and 2006, respectively, related to the Company's subsidiaries located in the U.K. and Taiwan.

Deferred Tax Assets

(In thousands)	December 31, 2008	December 31, 2007
Deferred tax assets:		
Net operating loss carryforwards	$ 79,386	$ 51,758
Research and development credits	9,218	6,606
Depreciation and Amortization	-	545
Allowance and Others	1,000	386
Total Deferred Tax Assets	89,604	59,296
Valuation allowance	(89,173)	(59,296)
Deferred tax liabilities:	431	-
Depreciation and Amortization	(342)	-
Net Deferred Tax Assets	$ 89	$ -

Management believes that based on a number of factors, it is more likely than not that the deferred tax assets will not be realized, such that a full valuation allowance is required against all U.S. deferred tax assets.

At December 31, 2008, the Company has approximately $202 million of federal and $178 million of California operating loss carry-forwards available to offset future taxable income which expire in varying amounts beginning in 2024 for federal and 2019 for state if unused. Additionally, the Company has research and development tax credits of approximately $5.4 million and $5.7 million for federal and state income tax purposes, respectively. If not utilized, the federal carry-forwards will expire in various amounts beginning in 2019, and the state credits can be carried forward indefinitely.

Federal and state laws impose substantial restrictions on the utilization of net operating loss and tax credit carryforwards in the event of an "ownership change," as defined in Section 382 of the Internal Revenue Code. The Company has not yet determined whether an ownership change occurred due to significant stock transactions in each of the reporting years disclosed. If an ownership change occurs, utilization of the net operating loss and tax credit carryforwards could be significantly reduced.

13. Employee Benefit Plans

The Company sponsors a 401(k) defined contribution plan covering all employees. Contributions made by the Company are determined annually by the Board of Directors. There were no contributions to the plan from inception through December 31, 2008.

14. Commitments

Operating Lease

The Company leases office space under non-cancelable operating leases with various expiration dates through August 2016. Rent expense for the periods ended December 31, 2008, 2007, and 2006 was $1.5 million, $2.2 million and $668,000 respectively.

Capital Lease

The Company has entered into various agreements to lease equipment under capital leases over terms between 12 and 60 months. The equipment under the leases are collateral for the lease obligations and are included within property and equipment, net on the consolidated balance sheet in the categories computer equipment and software and office furniture and equipment.

Future minimum commitments for leases are as follows (in thousands):

(In thousands)	Operating Leases	Capital Leases
2009	$ 1,575	$ 387
2010	974	270
2011	608	242
2012	562	218
2013 and thereafter	1,889	200
Total minimum lease payments	$ 5,608	$ 1,317
Less: Amounts representing interest not yet incurred		88
Present value of capital lease obligations		1,229
Less current portion		341
Long term portion of capital lease obligations		$ 888

Non-cancellable inventory and service related purchase commitments outstanding as of December 31, 2008, amount to $20.5 million, all of which are required to be settled in 2009.

At December 31, 2008 the Company has received refundable membership fees of $48.0 million from subscribers.

In addition, pursuant to the Company's supply agreement with Group Lotus plc, once the start of production has occurred, as defined in the supply agreement and as agreed between the parties, the Company is required to purchase a minimum of 1,700 partially assembled vehicles over the three year term of the agreement (325 in year one, 500 in year two, and 875 in year three) regardless of whether the Company is able to market and distribute the Tesla Roadster. Based on exchange rates for the British pound as of December 31, 2008 and the most recent price per vehicle, the Company's estimate of the purchase obligation for the remaining minimum is approximately $36.4 million.

The Company also has an obligation under a license agreement with AC Propulsion, Inc. (ACP) (See Note 6). ACP will be paid a royalty on vehicle sales by the Company through December 31, 2014. The royalty will equal 0.25% of the vehicle's manufacturer suggested retail price for every qualifying vehicle sold. The Company has the right to pay a lump sum equal to $5 million, minus royalties paid to date, in lieu of all future royalties at any time.

15. Subsequent Events

Convertible Notes Payable
In February and March 2009, the Company issued convertible notes payable in the amounts of $10.3 million and $15.2 million, respectively. These notes were issued under the December 2008 convertible notes payable facility and contained the same terms as the convertible notes payable issued in December 2008. The total amount of convertible notes payable issued under this facility was $40.0 million. See Note 8, "Convertible Notes Payable" for additional information.

Development Agreement
In May 2009, the Company signed a development agreement with Daimler AG for research and development services totaling $23.2 million. The Company had started these services in 2008 and had deferred $10.2 million of revenue at December 31, 2008 as the arrangement had not yet been finalized. The Company will recognize that revenue beginning in May 2009 through the remainder of the contract.

Series E Preferred Stock Issuance
In May 2009, the Company completed a financing in which $50.0 million of proceeds was received for 19,901,290 shares of Series E Preferred Stock at a price per share of $2.51. In connection with this financing, the $54.5 million of convertible notes outstanding as of December 31, 2008 were converted into 83,741,580 shares of Series E Preferred Stock and warrants to purchase 866,091 shares of Series E Preferred Stock at a price of $2.51 per share.

Zero-Emission Vehicle Credits Agreement
In February 2009, the Company signed a ZEV credit agreement to sell and transfer credits in eligible states for 2009 and subsequent model year vehicles to a third party automobile manufacturer during the period January 1 2009 to June 30 2010. The agreement includes a minimum purchase commitment by the third party automobile manufacturer and allows for the opportunity to purchase any additional ZEV credits above the minimum purchase commitment for the term of the arrangement.

Tesla Motors, Inc
Consolidated Income Statement
FY2009
$K

	Q109	Q209	Q309	YTD09
Revenue	$ 19,811	$ 31,113	$ 52,158	$ 102,883
Sales of zero-emission vehicle credits	1,275	4,341	2,030	7,645
Total operating revenue	20,886	35,454	54,188	110,528
Costs and Expenses				
Cost of Sales	22,567	24,548	38,471	85,604
Research & Development	8,085	10,690	9,534	28,309
Sales & Marketing	2,877	4,111	4,640	11,629
G&A	3,692	4,080	6,186	13,958
Total costs and expenses	37,241	43,428	58,831	139,499
Operating (Loss) Income	$ (16,355)	$ (7,973)	$ (4,643)	$ (28,972)
Interest Income/(Expense)	(1,388)	(1,057)	34	(2,410)
Other (Loss) Gain	1,972	(1,715)	(577)	(320)
Pre-Tax (Loss) Income	(15,769)	(10,745)	(5,186)	(31,701)
Tax	53	-	150	203
Net Loss	$ (16,717)	$ (10,745)	$ (5,036)	$ (31,498)
Cars delivered in US	173	184	229	586
Cars delivered in GMBH	-	-	44	44
Cars delivered in TML	-	-	62	62
Cars recognised from deferred revenue	9	16	8	33
Cars delivered but deferred	-	-	(19)	(19)
Total Deliveries recognised to revenue	**182**	**200**	**324**	**706**

The Company believes in good faith that the unaudited financial statements herein fairly present the financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers LLP, the Company's outside accountants.

Tesla Moto
Consolidated Balance Sheet
FY 2009
(In thousands)

	Q1 2009	Q2 2009	Q3 2009
Assets			
Current Assets			
Cash and cash equivalents	$ 11,745	$ 50,700	$ 106,547
Accounts receivable, net	531	4,546	1,386
Inventory	21,245	24,456	19,853
Prepaid expenses and other current assets	2,421	4,315	4,372
Total current assets	35,942	84,017	132,957
Property and equipment, gross	26,364	28,671	30,612
Accumulated depreciation	(6,236)	(9,852)	(11,139)
Property and equipment, net	18,128	18,819	19,473
Other assets	249	631	913
Restricted cash	1,220	2,901	3,680
Total assets	$ 55,538	$ 106,069	$ 155,923
Liabilities, Convertible Preferred Stock and Stockholders' Equity (Deficit)			
Current Liabilities			
Accounts Payable	$ 16,847	$ 16,462	$ 17,357
Accrued liabilities	10,877	10,853	9,739
Income tax payable	249	153	156
Refundable membership fees	42,826	52,275	24,812
Deferred revenue	17,614	11,212	7,531
Total Current Liabilities	87,212	90,956	59,595
Convertible preferred stock warrant liability	679	704	1,010
Warranty reserve	1,573	2,188	4,290
Convertible notes payable	74,150	-	-
Other long term liabilities	6,146	1,482	2,448
Total liabilities	169,760	95,330	67,343
Preferred Stock			
Series A, net of costs	3,549	3,549	3,549
Series B, net of costs	12,899	12,899	12,899
Series C, net of costs	39,789	39,789	39,789
Series D, net of costs	44,941	44,941	44,941
Series E, net of costs		135,671	135,668
Series F, net of costs			82,378
Total convertible preferred stock	101,178	235,849	319,225
Stockholders' equity (deficit)			
Common Stock	21	21	21
Additional paid in capital	4,552	4,586	4,638
Deferred Compensation	659	869	1,107
Retained earnings (deficit)	(204,914)	(204,914)	(204,914)
Net income (loss)	(15,717)	(26,462)	(31,498)
Total stockholders' equity (deficit)	(215,999)	(226,110)	(230,645)
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	$ 55,539	$ 105,069	$ 155,923

The above financials do not conform completely with the format of the published unaudited financials. The current liabilities do not include the current portion of $1.4M for Warranty reserve

The Company believes in good faith that the unaudited financial statements herein fairly present the financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers LLP, the Company's outside accountants.

Tesla Motors, Inc.
Statement of Cash Flows
FY2009
(in thousands)

	Q109	Q209	Q309
Cash flows from Operating activities			
Net Loss	$ (15,717)	$ (10,745)	$ (5,036)
Adjustments to reconcile net loss to net cash used in provided by operating activities:			
Depreciation and amortization	1,372	1,684	1,948
Change in fair value of preferred stock warrant liability	(1,396)	26	306
Changes in operating assets and liabilities:	-	-	-
Accounts receivable	2,790	(4,015)	3,160
Inventory	(4,596)	(3,210)	4,603
Prepaid expenses and other current assets	(240)	(1,895)	(57)
Other assets	9	(382)	(282)
Accounts payable	1,462	815	895
Accruals and other liabilities	931	1,862	(148)
Income tax payable	16	(95)	13
Refundable membership fees	(5,193)	9,450	(27,464)
Deferred revenue	3,368	(6,402)	(3,691)
Warranty reserve	715	615	2,102
Stock based compensation	-	-	449
[redacted]	[redacted]	[redacted]	[redacted]
Cash flows from Investing activities			
Purchases of property and equipment	(707)	(2,176)	(2,802)
Increase (decrease) in restricted cash deposits	-	(1,581)	(778)
Net cash used in investing activities	(707)	(3,757)	(3,580)
Cash flows from Financing activities			
Proceeds from notes payable	19,622	(80,700)	-
Proceeds from issuance of preferred stock	-	135,671	82,376
Proceeds from issuance of common stock	31	35	52
Net cash provided by financing activities	19,654	55,005	82,428
Increase (decrease) in cash and cash equivalents	2,468	38,955	55,847
Cash and cash equivalents, beginning of period	9,277	11,745	50,700
Cash and cash equivalents, end of period	$ 11,745	$ 50,700	$ 106,547

The format of the above cash flows does not conform completely with the published unaudited financials

financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Tesla Motors, Inc.
Consolidated Balance Sheet
FY 2009
(In thousands)

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09
Assets											
Current Assets											
Cash and cash equivalents	$ 3,557	$ 8,600	$ 11,745	$ 14,312	$ 58,841	$ 50,700	$ 39,376	$ 28,623	$ 106,547	$ 94,634	$ 82,382
Accounts receivable, net	136	531	142	249	4,546	2,670	4,066	1,386	684	2,475	
Inventory	20,215	21,349	21,248	18,790	18,842	24,456	21,498	24,152	19,653	19,286	22,185
Prepaid expenses and other current assets	2,233	1,544	2,421	2,580	3,372	4,315	4,922	4,662	4,372	4,223	3,612
Total current assets	26,006	31,630	35,942	35,823	81,905	84,017	66,411	80,503	131,952	118,627	110,655
Property and equipment, gross	26,316	26,654	26,384	26,751	27,544	28,571	29,419	30,487	30,612	32,883	33,399
Accumulated depreciation	(7,290)	(7,762)	(8,236)	(8,884)	(9,400)	(9,952)	(10,498)	(11,092)	(11,139)	(12,597)	(12,323)
Property and equipment, net	19,026	18,892	18,148	17,867	18,143	18,619	18,921	19,395	19,473	20,286	21,076
Other assets	256	256	249	236	852	631	655	786	913	803	936
Restricted cash	1,220	1,220	1,220	1,220	1,220	2,801	3,025	3,486	3,580	3,580	3,580
Total assets	$ 46,310	$ 51,999	$ 55,536	$ 55,147	$ 101,130	$ 106,069	$ 91,013	$ 84,173	$ 155,923	$ 143,596	$ 136,248
Liabilities, Convertible Preferred Stock and Stockholders' Equity (Deficit)											
Current Liabilities											
Accounts Payable	$ 13,676	$ 14,726	$ 15,647	$ 15,652	$ 14,933	$ 16,462	$ 14,744	$ 14,738	$ 17,357	$ 10,020	$ 12,718
Accrued liabilities	8,376	6,645	10,877	6,862	8,046	10,853	6,756	7,353	9,739	7,298	6,707
Income tax payable	204	202	281	222	123	194	125	124	198	116	59
Refundable membership fees	48,130	45,113	42,825	47,152	46,679	52,275	43,981	42,746	24,812	29,849	30,368
Deferred revenue	13,339	17,691	17,614	17,913	12,926	11,212	8,407	6,236	7,521	3,425	886
Deferred Income Tax Exp	28	28	28	28	28	28	28	28	28	28	28
Total Current Liabilities	83,463	84,409	87,272	87,830	83,735	91,024	74,042	71,225	59,595	53,741	50,566
Convertible preferred stock warrant liability	2,074	2,074	679	679	680	704	704	704	1,010	1,010	1,010
Warranty reserve	924	1,248	1,573	1,879	2,188	2,188	2,525	2,609	4,290	4,249	4,365
Convertible notes payable	58,676	65,576	74,750	80,017							
Other long term liabilities	5,311	5,721	6,146	7,007	1,130	1,482	1,676	1,727	2,448	2,629	2,842
Total liabilities	148,340	158,827	169,820	176,811	87,732	95,399	78,949	76,266	67,343	61,629	58,783
Preferred Stock											
Series A, net of costs	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549
Series B, net of costs	12,899	12,899	12,899	12,899	12,899	12,899	12,899	12,899	12,899	12,899	12,899
Series C, net of costs	39,789	39,789	39,789	39,789	39,789	39,789	39,789	39,789	39,789	39,789	39,789
Series D, net of costs	44,941	44,941	44,941	44,941	44,941	44,941	44,941	44,941	44,941	44,941	44,941
Series E, net of costs					135,225	135,671	135,671	135,671	135,669	135,669	135,669
Series F, net of costs									82,376	82,387	82,387
Total convertible preferred stock	101,178	101,178	101,178	101,178	236,400	236,849	236,849	236,849	318,225	319,195	319,234
Stockholders' equity (deficit)											
Common Stock	21	21	21	21	21	21	21	21	21	21	21
Additional paid in capital	4,526	4,532	4,552	4,557	4,569	4,586	4,591	4,626	4,638	4,714	4,736
Deferred Compensation	659	659	749	659	659	659	659	659	1,107	1,107	1,107
Retained earnings (deficit)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)	(204,914)
Net income (loss)	(3,500)	(8,303)	(16,466)	(23,185)	(24,580)	(26,769)	(25,142)	(29,333)	(31,496)	(36,156)	(42,719)
Total stockholders' equity (deficit)	(203,208)	(208,005)	(215,460)	(222,842)	(224,005)	(226,179)	(224,785)	(228,941)	(230,645)	(237,227)	(241,768)
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	$ 46,310	$ 51,999	$ 55,539	$ 55,147	$ 101,130	$ 106,069	$ 91,013	$ 84,173	$ 155,923	$ 143,596	$ 136,248

The Company believes in good faith that the unaudited financial statements herein fairly present the financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers LLP, the Company's outside accountants.

Tesla Motors, Inc
Consolidated Income Statement
FY2009
(In thousands)

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Q109	Q209	Q309	Q409	YTD09
Revenue																
Automotive and technology sales	$ 1,653	$ 5,759	$ 12,199	$ 9,370	$ 12,609	$ 9,134	$ 19,320	$ 8,358	$ 24,480	$ 6,545	$ 8,561	$ 19,611	$ 31,113	$ 52,158	$ 15,106	$ 117,989
Sales of zero-emission vehicle credits	1,275	-	-	476	2,438	1,425	694	497	839	131	2,263	1,275	4,341	2,030	394	8,039
Total operating revenue	2,928	5,759	12,199	9,846	15,047	10,559	20,014	8,855	25,319	6,677	8,824	20,886	35,454	54,188	15,500	126,028
Costs and Expenses																
Cost of Sales	2,589	6,677	13,312	10,117	8,670	8,561	(2,549)	3,814	20,105	4,281	4,031	22,558	24,548	38,705	8,376	93,982
Research & Development	2,725	1,601	3,510	3,108	3,134	4,559	2,723	3,336	3,310	4,173	4,266	8,136	10,801	9,372	8,439	36,748
Sales & Marketing	755	766	1,361	1,261	1,248	1,516	1,410	1,663	1,528	1,530	2,304	2,883	4,125	4,821	3,684	15,513
G&A	369	716	2,619	1,574	1,352	1,196	1,686	2,038	2,386	3,314	2,759	3,725	4,122	6,111	6,073	20,031
Total costs and expenses	6,439	9,960	20,802	16,060	14,403	15,832	13,270	12,873	27,329	13,414	13,360	37,301	43,596	59,009	26,572	166,274
Operating (Loss) Income	(3,511)	(4,201)	(8,604)	(6,212)	643	(5,273)	6,744	(4,018)	(2,010)	(6,736)	(4,536)	(16,446)	(8,142)	(4,384)	(11,274)	(40,246)
Interest income (Expense), net	(737)	(695)	45	(670)	(168)	14	15	9	9	24	22	(1,358)	(1,057)	84	35	(2,973)
Other income (expense), net	778	40	1,154	(256)	(1,325)	(122)	(81)	(182)	(314)	65	(49)	1,972	(1,715)	(577)	17	(303)
(Loss) income before income taxes	(3,500)	(4,856)	(7,504)	(7,856)	(1,175)	(5,381)	6,679	(4,191)	(2,315)	(6,658)	(4,563)	(15,850)	(10,914)	(4,827)	(11,221)	(42,922)
Tax	-	53	(61)	60	-	(68)	68	-	150	-	-	(8)	(8)	219	-	203
Net (loss) income	$ (3,500)	$ (4,803)	$ (7,565)	$ (7,797)	$ (1,175)	$ (5,450)	$ 6,648	$ (4,191)	$ (2,165)	$ (6,658)	$ (4,563)	$ (15,858)	$ (10,922)	$ (4,709)	$ (11,221)	$ (42,719)
Cars delivered in US	12	54	107	84	61	19	109	36	84	8	12	173	184	229	20	606
Cars delivered in GMBH								4	40	3	6	-	-	44	9	53
Cars delivered in TML								4	58	6	8	-	-	62	14	76
Cars recognised from deferred revenue	4		5		1	15	7	1	-	13	5	9	16	8	18	51
Cars delivered but deferred									(19)		-	-	-	(19)	-	(19)
Total Deliveries recognised to revenue	16	54	112	84	62	34	116	45	163	30	31	182	200	324	61	767

The Company believes in good faith that the unaudited financial statements herein fairly present the financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers LLP, the Company's outside accountants

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Tesla Motors, Inc.
Statement of Cash Flows
FY2009
(In thousands)

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Q109	Q209	Q309	Q409	2009
Cash flows from Operating activities																
Net Loss	$ (3,500)	$ (4,803)	$ (7,460)	$ (7,297)	$ (1,175)	$ (2,450)	$ 1,648	$ (4,191)	$ (2,165)	$ (6,658)	$ (4,563)	$ (15,762)	$ (10,922)	$ (4,709)	$ (11,221)	$ (42,614)
Adjustments to reconcile net loss to net cash used in provided by operating activities:																
Depreciation and amortization	351	360	361	635	509	542	533	352	833	648	632	1,372	1,684	1,948	1,280	6,285
Change in fair value of preferred stock warrant liability	-	-	(1,396)	-	1	25	-	-	306	-	-	(1,396)	26	306	-	(1,064)
Changes in operating assets and liabilities:																
Accounts receivable	3,319	(135)	(394)	359	(108)	(4,296)	1,866	(367)	1,681	702	(1,791)	2,790	(4,015)	3,160	(1,090)	845
Inventory	(3,585)	(194)	(104)	2,455	(62)	(5,813)	3,025	(2,719)	2,469	1,367	(2,900)	(3,596)	(3,210)	4,809	(2,533)	(5,530)
Prepaid expenses and other current assets	(52)	689	(677)	(159)	(792)	(943)	(607)	261	290	149	610	(240)	(1,895)	(57)	760	(1,432)
Other assets	0	0	6	19	(225)	(169)	(23)	(133)	(125)	110	(183)	6	(392)	(282)	(25)	(678)
Accounts payable	(808)	1,350	919	5	(719)	1,529	(1,719)	(6)	2,619	(4,337)	(302)	1,462	815	895	(4,639)	(1,467)
Accruals and other liabilities	(2,405)	(1,320)	4,857	(155)	1,457	(159)	(3,901)	647	23,106	(22,259)	(379)	931	1,862	(148)	(2,636)	9
Income tax payable	(1)	(2)	(27)	(59)	(99)	70	(69)	(1)	15	(21)	(59)	(29)	(87)	(55)	(79)	(251)
Deferred income tax expense	-	-	-	-	-	-	-	-	-	(0)	-	-	-	-	-	(0)
Refundable membership fees	112	(3,017)	(2,288)	4,327	(473)	5,596	(8,294)	(1,235)	(17,935)	5,037	519	(5,193)	9,450	(27,464)	5,556	(17,651)
Deferred revenue	(1,907)	3,352	(77)	(901)	(3,387)	(2,714)	(2,505)	(2,171)	3,265	(4,092)	(2,742)	(733,368)	(6,402)	(3,891)	(6,834)	(13,560)
Warranty reserve	96	324	325	306	309	1	337	84	1,681	(42)	117	715	615	2,102	75	3,507
Stock based compensation	-	-	90	(90)	1	258	(259)	-	449	-	-	90	168	190	-	449
Net cash used in operating activities	(7,289)	(3,236)	(5,953)	(2,931)	(4,356)	(5,005)	(10,269)	(9,271)	(3,461)	(10,398)	(10,991)	(16,478)	(12,293)	(23,001)	(21,388)	(73,161)
Cash flows from Investing activities																
Purchases of property and equipment	(484)	(526)	303	(374)	(784)	(1,017)	(535)	(1,056)	(911)	(1,561)	(1,322)	(707)	(2,176)	(2,602)	(2,883)	(8,368)
Increase (decrease) in restricted cash deposits	-	-	-	-	-	(1,581)	(224)	(461)	(93)	(0)	-	-	(1,581)	(778)	(0)	(2,360)
Net cash used in investing activities	(484)	(526)	303	(374)	(784)	(2,599)	(1,060)	(1,517)	(1,004)	(1,561)	(1,322)	(707)	(3,757)	(3,580)	(2,883)	(10,928)
Cash flows from Financing activities																
Proceeds from notes payable	2,048	5,800	8,774	5,867	(66,567)	-	-	-	-	-	-	13,822	(60,700)	-	-	(61,078)
Proceeds from issuance of preferred stock	-	-	-	-	136,225	(554)	-	-	82,376	(30)	39	-	135,671	82,376	9	218,055
Proceeds from issuance of common stock	5	6	20	6	13	17	5	35	12	76	22	31	36	52	98	216
Net cash provided by financing activities	2,053	5,806	8,794	5,873	69,669	(537)	5	35	82,389	46	60	13,854	75,007	82,428	107	157,194
Increase (decrease) in cash and cash equivalents	(5,720)	2,044	3,144	2,567	64,529	(8,141)	(11,324)	(10,753)	77,924	(11,913)	(12,252)	(3,332)	58,955	55,847	(24,165)	73,105
Cash and cash equivalents, beginning of period	9,277	3,557	5,600	11,745	14,312	58,841	50,700	39,376	28,623	106,547	94,634	9,277	11,745	50,700	106,547	9,277
Cash and cash equivalents, end of period	$ 3,557	$ 5,600	$ 11,745	$ 14,312	$ 58,841	$ 50,700	$ 39,376	$ 28,623	$ 106,547	$ 94,634	$ 82,382	$ 11,745	$ 50,700	$ 106,547	$ 82,382	$ 82,382

The Company believes in good faith that the unaudited financial statements herein fairly present the financial condition and results of the start-up operations of the Company as of the dates, and for the periods, indicated herein; provided, however, that such unaudited financial statements are subject to certain recasting and adjustments to be performed in connection with the audit thereof by PricewaterhouseCoopers LLP, the Company's outside accountants.

Exhibit 5.1(l)(ii)

Computations showing Pro Forma Covenant Compliance

[See attached]

Tesla Motors, Inc.
Financial Covenants in relation to ATVM Loan Funding Arrangement

In accordance to Annex 9.1 (c) (i)

Total current assets 9/30/09	$131,950,000		
Total current liabilities 9/30/09	$36,187,000		*Covenant Requirement*
Current ratio as of 9/30/09	3.65	>	*1.40*

In accordance to Annex 9.1 (c) (ii)

			Covenant Requirement	
Cash balance 11/30/09	$82,382,000			
Expected Initial Advance under the Notes (P)	$16,839,741		*$15,000,000*	
Expected Initial Advance under the Notes (S)	$4,435,238		*$66,525*	*Interest Expense Annualized*
Total Pro Forma Cash Balance	$103,656,979	>	*$15,066,525*	

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit 5.1(m)

Business Plan

[See attached]

5.1 (m) Business Plan (01-14-2010)

The following outlines the current view of our business plan through 2022. The first section of the document provides an overview of our current operations including the [redacted], which will not be funded by proceeds of this loan, as well as detail on our sales, marketing, distribution and product development strategy. The second section of the document outlines our operations that are to be funded with the proceeds of this loan, namely [redacted] and includes milestones, budget forecasts, pro forma financial statements, and a forecasted schedule of advances as Exhibits.

[redacted]

We market and sell the Tesla Roadster directly to consumers. These sales take place primarily in our stores; however, a portion of this business is conducted via the phone and internet. We currently operate facilities in the United States, Germany, France, and the United Kingdom. [redacted]

Our stores are also the primary locations where we perform warranty and service repairs. We have recently deployed mobile service units, known as the Tesla Rangers, to perform service work in remote locations or at a customer's residence or place of business. [redacted]

[redacted] As the first company to produce a federally-compliant, 100% electric vehicle that achieves a 200+ mile range on one charge, we have been able to generate significant media coverage of the company and our vehicles and we believe we will continue to do so. [redacted] Recently, however, we have begun utilizing traditional advertising, including product placement in a variety of media outlets and pay-per-click advertisements on websites and applications relevant to our target demographics. Our marketing efforts also include events where our vehicles are displayed and demonstrated. These events range from widely attended public events, such as the Detroit, Los Angeles, and Frankfurt auto shows, to smaller events oriented towards sales, such as private drive events. Our corporate website, www.teslamotors.com, is also a key element of our marketing efforts and offers information about our company and our vehicles. [redacted]

[redacted]

[redacted]

The included projections for the cost of [redacted] are estimations that we have produced in good faith. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] These expenses are not included in the project budget and will not be submitted for reimbursement from the DOE ATVM loan.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] By year-end 2009, we had received an initial purchase order for development work with Southern California Edison (SCE) for energy storage applications using electric vehicle battery packs.

[redacted]

[redacted]

Progress Reporting

[redacted]

Milestone Code	Milestone Status
(b) (4)	[redacted]

Sources and Uses of Project Funding

Both projects are fully funded by Tesla Motors, Inc., and the Department of Energy ATVM Loan Program. The funding structure of both projects is summarized in the table below.

Project *(in USD millions)*	Total Cost	Historical Cost	DOE Loan Amount	Tesla Amount
Project S [redacted]	[redacted]			
Project P [redacted]				
Total				

[redacted]

Management Summary

Elon Musk has served as our Chief Executive Officer since October 2008 and as Chairman of our Board of Directors since April 2004. In addition Mr. Musk has served as product architect since Tesla started. Mr. Musk has also served as Chief Executive Officer and Chief Technology Officer of Space Exploration Corporation, a company which is developing and launching advanced rockets for satellite and eventually human transportation, since June 2002, and as Chairman of SolarCity, a solar installation company, since July 2006. Prior to joining Space Exploration Corporation, Mr. Musk co-founded PayPal, an electronic payment system, which was acquired by eBay in October 2002, and Zip2 Corporation, a provider of Internet enterprise software and services, which was acquired by Compaq in March 1999. Mr. Musk holds a B.A. in physics from the University of Pennsylvania, and a B.S. in business from the Wharton School of the University of Pennsylvania.

Deepak Ahuja has served our Chief Financial Officer since August 2008. Prior to joining us, Mr. Ahuja served in various positions at Ford Motor Company from August 1993 to July 2008, most recently as the Vehicle Line Controller of Small Cars Product Development from July 2006 to July 2008, and as Chief Financial Officer for Ford of Southern Africa from February 2003 to June 2006. Mr. Ahuja also served as the Chief Financial Officer for Auto Alliance International, a joint venture between Ford and Mazda, from September 2000 to February 2003. Mr. Ahuja holds an M.S.I.A. (which was subsequently redesignated as an M.B.A.) from Carnegie Mellon University, a M.S. in materials engineering from Northwestern University and a Bachelors degree in ceramic engineering from Banaras Hindu University in India.

Jeffrey B. Straubel has served as our Chief Technology Officer since May 2005 and started at Tesla in May 2004. Prior to joining us, Mr. Straubel was the Chief Technical Officer and co-founder of Volacom Inc., an aerospace firm which designed a specialized high-altitude electric aircraft platform, from 2002 to 2004. Mr. Straubel holds a B.S. in energy systems engineering from Stanford University and a M.S. in engineering, with an emphasis on power electronics, microprocessor control and energy conversion, from Stanford University.

Gilbert Passin joins us by February 2010 as our VP of Manufacturing. Mr. Passin has almost 25 years of automotive experience with leadership positions in manufacturing and production engineering at Toyota, Volvo Trucks, Mack Trucks and Renault. Prior to joining us, Mr. Passin was at Toyota Motor since 2005. Most recently he was the Chief Production Engineer for North America, responsible for implementing the latest advances in the Toyota production method to the North America plants and for transitioning the production of the Toyota Tacoma from NUMMI to a Kentucky Assembly plant. Prior to this position, Mr. Passin was the VP of Manufacturing for Toyota's Canadian operations which manufactures the Toyota Corolla and Lexus RX. Prior to that Mr. Passin was the VP of Manufacturing at Volvo Trucks from 2002 to 2005 and at Mack Trucks from 1992 to 2000. From 1986 to 1992, Mr. Passin worked at Renault in the United Kingdom, France and Canada in various process and production engineering positions. Mr. Passin holds a Bachelor's degree in Engineering from Ecole Centrale Paris, France.

John Walker has served as our Vice President, North America Sales & Marketing since August 2009. Prior to joining us, Mr. Walker served in various sales and marketing positions at Audi, a German luxury car maker, from August 1999 to August 2009. Most recently he served as general manager sales operations for Audi of America and previously as director of sales for Audi Canada and general manager of sales for Audi Australia. Mr. Walker holds a B.S. in economics and industrial psychology from Rhodes University.

Cristiano Carlutti has served as our Vice President, EU Sales & Marketing since January 2010. Prior to joining Tesla, Mr. Carlutti was a Vice President and Development Manager with Fiat Group Automobiles in Torino, Italy. In addition, Mr. Carlutti served as a Managing Director for the XX Winter Olympic Games in Torino, Italy, from 2002 – 2006. He also has extensive automotive sales and marketing experience with Autocontact Italia and Fiat Auto Ireland. Mr Carlutti received a degree in Classical Studies from Classic Lyceum in Udine, Italy, and a degree in Business Administration (International Marketing) from the University Luigi Bocconi in Milan, Italy

Peter Rawlinson has served at Tesla since February 2009 and as our Vice President of Vehicle Engineering since September 2009. Mr. Rawlinson has over 25 years in vehicle product engineering. Prior to joining us, Mr. Rawlinson was an Engineering Consultant from April 2004 to January 2009 and led Vehicle Engineering at Corus Automotive, an automotive engineering consultancy firm, from July 1997 to March 2004. Prior to that, he was the Chief Engineer of Advanced Engineering at Lotus from June 1995 to June 1997, at GKN Technology from January 1992 to June 1995 and at Jaguar Cars from January 1985 to December 1991. Mr. Rawlinson holds a BSc in Mechanical Engineering from Imperial College, University of London, UK.

Franz von Holzhausen has served as our Senior Design Executive since August 2008 and is the designer of the Model S. Prior to joining us Mr. von Holzhausen was the Design Director for Mazda North America from February 2005 to July 2008, responsible for all Mazda vehicle product design for North America. He also served as Design Manager at General Motors from January 2000 to January 2005, leading vehicle designs for Chevy, Pontiac, Saturn, and Opel. Mr. von Holzhausen was also Assistant Chief Designer for Volkswagen/Audi from 1992 to 2000. He holds a BS degree in Transportation Design from Art Center College of Design in Pasadena, CA.

Diarmuid O'Connell has served as our Vice President of Business Development since 2008. He joined the company as Director of Marketing in 2006. Prior to joining us, Mr. O'Connell served as Chief of Staff for Political Military Affairs at the US State Department from August 2003 to March 2005, where he was involved in policy and operational support to the U.S military in various theaters of operation. Before his tenure in Washington, Mr. O'Connell worked in corporate strategy as a management consultant for Accenture from June 1995 to March 1999, as a founder and COO of educational software developer, Real Time Learning from April, 1999 to March 2001, and as a senior marketing executive with both McCann Erickson Worldwide and Young and Rubicam. Mr. O'Connell earned a bachelor's degree from Dartmouth College, a master's degree in Foreign Policy from the University of Virginia, and an MBA from the Kellogg School of Management.

Arnnon Geshuri has served as our Vice President of Human Resources since November of 2009. Before joining Tesla, Mr. Geshuri was Google's chief staffing architect from 2004 – 2008 and then headed up human resources operations for their applications engineering division in 2009. Before Google, Geshuri was vice president of human resources and director of global staffing for E*TRADE Financial from 1999 to 2002 and was the head of global staffing at Applied Materials, Inc from 1996 to 1999. In the early 1990s, Geshuri was an organizational effectiveness consultant for New United Motors Manufacturing (NUMMI), the Fremont, Calif.-based joint venture of Toyota and General Motors. Geshuri, who has a bachelor's degree in psychology from the University of California at Irvine and a master's in industrial/organizational psychology from San Jose State University, launched focus groups to improve efficiency and morale among NUMMI assembly-line workers and supervisors.

Evelyn Chiang has served as our VP Supply Chain and Information Technology since 2009 and served as our Senior Director of Supply Chain and Information Technology since August 2007. Prior to joining Tesla, Ms. Chiang served in several positions with SAP AG since November 1997, most recently as Senior Vice President of Operations from July 2004 to May 2007. Ms. Chiang holds a Bachelor of Science in Aeronautics and Astronautics from the Massachusetts Institute of Technology.

Ricardo Reyes has served as our Vice President of Communications since September of 2009. Before joining Tesla, Mr. Reyes held various positions with Google Inc. from 2006 to 2009, most recently as the head of communications and public affairs for Google subsidiary, YouTube. He previously handled litigation, competition and policy communications for Google. Mr. Reyes also spent a decade working on public policy and communications in Washington DC, including at Bracewell and Giuliani LLC. Mr. Reyes served the EOP as Deputy Assistant US Trade Representative for Public and Media Affairs from 2001 to 2004, as a spokesman for US international trade policy. He was also managing editor of Regulation Magazine published by the Cato Institute, and worked with various public policy groups during his time in DC. In 1996, Mr. Reyes worked as an observer for national elections in his birth country, Nicaragua. He is a graduate of Rice University.

Jim Dunlay has served as our Vice President, Powertrain Hardware Engineering since July 2009 and has served as our Director of Electrical Engineering since October 2006. Mr. Dunlay leads our powertrain design and manufacturing functions, which now produces motors, power electronics and battery packs for the Roadster and batteries and chargers for Daimler's Smart ForTwo electric drive. Before joining Tesla, Mr. Dunlay spent 22 years in the computer industry developing computer systems at Sun Microsystems from January 1987 to December 2001, computer security products at startup Gordian Systems from July 1985 through December 1986, manufacturing test equipment at Tandem Computers from January 1982 to June 1985, and electronic instrumentation at Hewlett Packard from August 1979 to December 1981. Mr. Dunlay earned his Bachelor's Degree in Electrical Engineering and Computer Science from the Massachusetts Institute of Technology.

Mike Taylor has served as our VP, Finance since September 2007. Prior to joining us, Mr. Taylor served as Vice President, Finance and Chief Financial Officer for Tropos Networks, Inc. from April 2002 to September 2007, Chief Financial Officer for Benchmark Capital from November 1999 to April 2002, and Vice President, Corporate Finance for network management pioneer Micromuse, Inc. from July 1997 to November 1999. At Micromuse, Mr. Taylor coordinated the IPO, secondary offerings and several private financing rounds and managed all financial planning and investor relations activities. Mr. Taylor began his career at Goldman, Sachs & Co., holds a B.A in political economy of industrialized societies from the University of California, Berkeley, an M.B.A from Stanford Graduate School of Business, and a J.D. from Stanford Law School.

Rex Liu joined us in November 2009 as our Corporate Controller. Prior to joining Tesla, Mr. Liu was the Assistant Controller at Gilead Sciences, Inc., a Foster City, California, based biopharmaceutical company focused on the discovery, development and commercialization of innovative therapeutics in areas of unmet medical need. Prior to starting at Gilead in November 2003, Mr. Liu worked in audit and advisory services with Ernst & Young, LLP since 1996 (in the life sciences practice in Palo Alto, California and the entrepreneurial practice in Canada). Mr. Liu is an active C.P.A. in the State of California. Mr. Liu is also a

chartered accountant in Canada and holds an M.B.A. and a B.Sc. in Immunology from the University of Toronto.

Matt Au joined Tesla as Vice President, Corporate Controller in July 2009. Since November 2009, Mr. Au has served as Vice President, Operations Finance. Prior to Tesla, Mr. Au spent 5 years at Gilead Sciences as Vice President of Finance, responsible for all day-to-day accounting, financial, tax and treasury activities. Before Gilead, Mr. Au spent 9 years at KLA-Tencor and served in several positions, including Vice President, Corporate Controller from 2000 to 2003. Mr. Au also spent 5 years with IBM in various accounting and finance positions. Mr. Au holds a bachelor's degree in accounting and finance from University of California at Berkeley, and an M.B.A. from University of Chicago.

Craig Harding has served as our Acting General Counsel and Assistant Secretary since December 2009, and served as our General Counsel and Secretary from October 2006 to September 2009. Prior to joining us, Mr. Harding served as General Counsel and Secretary at Metreo, Inc., an enterprise software provider, from December 2000 to February 2006. Mr. Harding holds a BA in mathematics from Duke University and a JD from Vanderbilt University.

Dag Reckhorn has served as our Director of Manufacturing since December 2009. Prior to joining us, Mr. Reckhorn served as the Chief Executive Officer of LSP Automotive, LLC from May 2009 to December 2009 where he oversaw plant operations for an A-Class automotive body stamping facility. Prior to joining LSP Automotive, Mr. Reckhorn was the Vice President and COO for Karmann USA, an engineering firm and supplier of soft and retractable hard tops for the automotive industry from January 2006 to April 2009. Prior to Karmann USA, Mr. Reckhorn served in various positions with Wilhelm Karmann GmbH since July 1993, most recently as project manager for the Crossfire Roadster vehicle. Mr. Reckhorn has a Masters in Engineering from Fachhochschule Hamburg, Technical University, Hamburg, Germany and a B.S. in science and engineering from University of Port Elizabeth, South Africa.

Kurt Kelty has served as the Director of Battery Technologies since February 2006. Prior to joining us, Mr. Kelty worked for Matsushita (Panasonic) for nearly fifteen years, seven of those years in Japan. He founded and led Panasonic's battery research lab in Silicon Valley and created R&D alliances between Panasonic and other battery and fuel cell developers in the U.S. Mr. Kelty received his B.A. in Biology from Swarthmore College in 1986 and his MSc from the Stanford University Graduate School of Business in 1997.

Christian Reynolds has served as our Director of Vehicle Assembly since August 2005, and oversees the production of the Tesla Roadster. Prior to joining us, Mr. Reynolds was Principle Manufacturing Engineering Manager with TWR Engineering from August 2001 to July 2005, responsible for projects execution for vehicle build within final assembly operations on client based projects in China and Australia. Prior to TWR, Mr. Reynolds was with Lotus Group from April 2000 to July 2001 where he set up the final assembly processes and facilities to support the 2nd generation Elise. Mr. Reynolds started his career at MG Rover Group from May 1994 to March 2000 working in a variety of Manufacturing Operations and Manufacturing Engineering positions. Mr. Reynolds holds a Higher National Certificate in Mechanical Engineering and an Executive Diploma in Management from North East Worcestershire College.

Christian Frederickson has been with Tesla Motors since June 2007 and is currently serving as our Director of Quality, Reliability and Vehicle Validation Test. Prior to joining Tesla, Christian held various director-level roles leading systems reliability and quality activities for LSI Logic Storage Systems (2006-2007), Sun Microsystems Storage Systems (2002-2006) and Lam Research Semiconductor Equipment (1997-2002). Christian started his career with the General Electric Nuclear Energy Division working in various design, program management and quality roles from 1984 through 1997. His final role with GE was leading the rollout of GE's Six Sigma strategy as a Certified Six Sigma Master Black Belt from 1995 through 1997. Christian holds an MSME from the University of California at Berkeley.

Tom Wessner has served as our Director of Purchasing since November 2009. Prior to joining us, Mr. Wessner was the Vice President of Purchasing for Auto Alliance International, a joint venture between

Ford Motor Company and Mazda that manufactures the Mazda 6 and the Ford Mustang since June 2008. Prior to Auto Alliance, Mr. Wessner was the Deputy General Manager of the Purchasing Division of Mazda in Japan from March 2005 to June 2008. Prior to Mazda, Mr. Wessner was the Purchasing Director for Ford of Mexico from May 2002. Mr. Wessner has held various positions in purchasing and finance with both the Ford Motor Company and Mazda since 1986. Mr. Wessner holds a B.S. in Industrial Organizational Psychology from Penn State University and a MBA with an emphasis in finance, also from Penn State.

Ryan Popple joined Tesla Motors in July 2007 and is currently the Director of Financial Planning & Analysis. Prior to joining Tesla Motors, Mr. Popple was the Senior Financial Analyst for Cilion Energy, a biofuels venture, and a consultant for several alternative energy start-ups and investment funds focused on clean transportation and alternative fuel technology. His experiences include financial and strategic planning, as well as technology-related business development projects. Prior to working in the alternative energy sector, Mr. Popple worked for Chevron in the Corporate Finance group, as well as for ExxonMobil in Corporate Treasury. He earned a BBA in finance from the College of William & Mary and an MBA from Harvard Business School, where he focused on energy economics and corporate finance.

Tom vonReichbauer has served at Tesla since September 2008 and as the Director of Finance, Product Development, since November 2009. Prior to joining Tesla, Tom worked in a variety of financial roles at Ford Motor Company. His work there included the financial management of three product programs, including a new global small car and the major overhaul of a product line with hybrid derivatives, and was responsible for national sales incentives strategy. He has a BS in economics and management from the University of Pennsylvania and an MBA from the Wharton School of Business.

Alan Cherry has served as Head of Human Resources and Senior Director Human Resources since June 2008. Mr. Cherry has over 20 years experience gained with many progressive high technology companies such as Hewlett Packard, Autodesk and Network Appliance. He has extensive global operations experience having lived and worked in Europe, Asia Pacific and North America. Mr. Cherry has a degree in Business Studies and a post graduate diploma in Human Resources.

Greg Zanghi serves as Director, Global Service & Parts Operations. Greg joined Tesla in 2006. He manages all aspects of service, parts, technical documentation, tooling, personnel, service related government compliance and tactical support. Before joining Tesla Motors, Greg was the National After Sales Director for Ducati North America where he managed operational support of service, parts, customer service and government compliance for the U.S. and Canada. Prior to joining Ducati, Greg managed a high end / high performance motorcycle dealer. Before entering the auto industry, Greg was a Branch Manager for a high tech staffing firm based in Redmond, Washington managing the Microsoft team and possesses over 14 years of management experience. Greg received his Bachelors Degree from Washington State University in Criminal Justice and was a member of the Criminal Justice Honor Society. Greg works closely with the Washington State University Engineering and Entrepreneurial Program.

General Counsel - Open

Corporate Governance

We have corporate governance in place that is customary for similarly-situated private companies and have taken additional steps to ensure that we will be compliant with the SEC rules for a public company upon the completion of our planned initial public offering. Our board of directors has previously established an audit committee and a compensation committee and, upon the completion of our planned initial public offering, our board will also have a nominating and governance committee. In December 2009, new charters were adopted for each of these committees that will be in effect upon the completion of our initial public offering.

The audit and compensation committees will continue to function while we are still a private company. Each of these committees is comprised solely of non-employee directors. A summary of the composition and responsibilities of each such committee is set forth below.

Director Independence
In connection with our planned initial public offering, each member of our board of directors completed a director and officer questionnaire regarding, among other issues, matters related to such director's independence. Based upon its review and evaluation of these completed questionnaires, the board determined that all directors other than Elon Musk, Kimbal Musk and Herbert Kohler qualified as independent directors.

Audit Committee
Our audit committee is comprised of Brad Buss, Antonio Gracias and Steve Jurvetson each of whom is a non-employee member of our board of directors. Mr. Buss is the chairperson of our audit committee. The audit committee typically convenes a few days prior to each Board meeting and has met more frequently recently in preparation for filing the S-1. Our audit committee is responsible for, among other things:

- reviewing and approving the selection of our independent auditors, and approving the audit and non-audit services to be performed by our independent auditors;
- monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to financial statements or accounting matters;
- reviewing the adequacy and effectiveness of our internal control policies and procedures; and
- discussing the scope and results of the audit with the independent auditors and reviewing with management and the independent auditors our interim and year-end operating results.

Our audit committee charter, as currently in effect, is attached as an annex to this Business Plan. As the company grows in size and complexity, it will consider establishing an internal audit function which will report to the Audit Committee, with the goal to improve overall internal controls.

Compensation Committee
Our compensation committee is currently comprised of Brad Buss, Ira Ehrenpreis and Antonio Gracias. Mr. Ehrenpreis is the chairperson of our compensation committee. The compensation committee has held multiple meetings in 2009. The committee is responsible for, among other things:

- overseeing our compensation policies, plans and benefit programs;
- reviewing and approving for our executive officers: the annual base salary, bonus arrangements, equity compensation, employment agreements, severance arrangements and change in control arrangements, and any other benefits, compensations or arrangements;
- assisting the Board in the administration of our equity compensation plans.

Our compensation committee has been functioning based on the above guidelines but does not presently have a charter. At the next Board meeting, the Company plans to ask the Board to adopt a compensation committee charter substantially in the form included in the annex.

Succession Planning:
The Board will periodically review the succession planning for the Chief Executive Officer and other executive officers. It may consider setting up a sub-committee to focus on this effort. The role of the sub-committee may include using search firms, reporting its findings and recommendations to the Board, and working with the Board in evaluating potential successors to these executive management positions.

Update to Tesla Business Plan

Several positive developments have occurred in our business since June 2009 when the Conditional Commitment letter was signed between Tesla and the Department of Energy for a $465M loan under the Advanced Technology Vehicle Manufacturing (ATVM) program.

[redacted]

(b) (4)

[redacted]

Annex

The following additional items are included in the annex of this document:

Base Case *pro forma* Financial Forecast
Forecast Schedule of Loan Advances
Project Budgets and Milestones
Base Case Financial Covenant Analysis
Additional Case *pro forma* Financial Forecast (excluding additional equity financing)
Additional Case Financial Covenant Analysis
Audit Committee Charter
Form of the Compensation Committee Charter

CONSOLIDATED INCOME STATEMENT - TESLA MOTORS [redacted] as developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc.
Values in USD millions considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
[redacted]														
Revenue														
[redacted]														
Revenue														
Cost of Sales														
[redacted]														
Cost of Sales														
[redacted]														
R&D														
Sales & Marketing														
General & Administrative														
Total Cost and Expenses														
Operating Income														
Interest Income (Expense)														
Other (Loss) Gain														
Pre-Tax Income														
Tax (Expense) Gain														
Net Income														

CONSOLIDATED BALANCE SHEET - TESLA MOTORS *This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b))*

Values in USD millions

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
ASSETS														
Current Assets														
Cash														
Accounts Receivable														
Inventory, net														
Prepaid expenses and other current assets														
Total Current Assets														
Property and equipment, gross														
Accumulated Depreciation														
Property and equipment, net														
Other Assets														
Total ASSETS														
LIABILITIES & EQUITY														
Liabilities														
Current Liabilities														
Accounts Payable														
Accrued Liabilities														
Income Tax Payable														
Membership Fees														
Deferred Revenue														
Total Current Liabilities														
Stock Warrant														
Warranty Reserve														
Notes Payable														
DOE LGP Program														
Other Long Term Liabilities														
Total LIABILITIES														
EQUITY														
Preferred Stock:														
Series A, net of costs														
Series B, net of costs														
Series C, net of costs														
Series D, net of costs														
Series E, net of costs														
Series F, net of costs														
Common Stock														
Additional paid in capital														
Deferred Compensation														
Retained earnings (deficit)														
Net Income (loss)														
Total EQUITY														
Total LIABILITIES & EQUITY														

CONSOLIDATED STATEMENT OF CASH FLOWS - TESLA MOTORS [redacted] or trade expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc.
Values in USD millions considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Cash Flow from Operations														
Net Income	[redacted]													
Depreciation														
Net Income, adjusted														
Accounts Receivable, net														
Inventory, net														
Prepaid expenses and other current assets														
Deposits & other assets														
Accounts Payable														
Accrued Liabilities														
Income Tax Payable														
Membership Fees														
Deferred Revenue														
Warranty Reserve														
Cash Flow from Operations														
Cash Flow from Investing														
Plant, Property, Equipment														
Cash Flow from Financing														
Series A, net of costs														
Series B, net of costs														
Series C, net of costs														
Series D, net of costs														
Series E, net of costs														
Series F, net of costs														
Common Stock														
Additional paid in capital														
Deferred Compensation														
Stock Warrant														
Notes Payable and Interest-in-Kind														
DOE LGP Program														
Other Long Term Liabilities														
Cash Flow from Financing														
Cash Balance, Beginning														
Net Cash Flow														
Cash Balance, Ending														

Forecasted Schedule of Advances
$mils

Note: Schedule assumes standard ATVM - Tesla funding terms without additional considerations for IPO or other scenarios.

Project S [redacted]

Total Uses	[redacted]
Historical	
Incremental	
DOE Loan	364

[redacted]

	Initial Advance	Periodic Advance	Total DOE Funding	Tesla Funding Ratio	Tesla Funding	Total Sources
Historical	[redacted]					
4Q2009						
1Q2010						
2Q2010						
3Q2010						
4Q2010						
1Q2011						
2Q2011						
3Q2011						
4Q2011						
1Q2012						
2Q2012						
3Q2012						
4Q2012						

Project P [redacted]

Total Uses	[redacted]
Historical	
Incremental	
DOE Loan	101

[redacted]

	Initial Advance	Periodic Advance	Total DOE Funding	Tesla Funding Ratio	Tesla Funding	Total Sources
Historical	[redacted]					
4Q2009						
1Q2010						
2Q2010						
3Q2010						
4Q2010						
1Q2011						
2Q2011						
3Q2011						
4Q2011						
1Q2012						
2Q2012						
3Q2012						
4Q2012						

Project P [redacted]

Milestone

[redacted]

Project S [redacted]

[redacted]

DOE COVENANT ANALYSIS

CONSOLIDATED INCOME STATEMENT - TESLA MOTORS *Values in USD millions*

[redacted] was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
[redacted]														
Revenue														
[redacted]														
Revenue														
Cost of Sales														
[redacted]														
Cost of Sales														
[redacted]														
R&D														
Sales & Marketing														
General & Administrative														
Total Cost and Expenses														
Operating Income														
Interest Income (Expense)														
Other (Loss) Gain														
Pre-Tax Income														
Tax (Expense) Gain														
Net Income														

CONSOLIDATED BALANCE SHEET - TESLA MOTORS
Values in USD millions

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
ASSETS														
Current Assets														
Cash														
Accounts Receivable														
Inventory, net														
Prepaid expenses and other current assets														
Total Current Assets														
Property and equipment, gross														
Accumulated Depreciation														
Property and equipment, net														
Other Assets														
Total ASSETS														
LIABILITIES & EQUITY														
Liabilities														
Current Liabilities														
Accounts Payable														
Accrued Liabilities														
Income Tax Payable														
Membership Fees														
Deferred Revenue														
Total Current Liabilities														
Stock Warrant														
Warranty Reserve														
Notes Payable														
DOE LGP Program														
Other Long Term Liabilities														
Total LIABILITIES														
EQUITY														
Preferred Stock:														
Series A, net of costs														
Series B, net of costs														
Series C, net of costs														
Series D, net of costs														
Series E, net of costs														
Series F, net of costs														
Common Stock														
Additional paid in capital														
Deferred Compensation														
Retained earnings (deficit)														
Net Income (loss)														
Total EQUITY														
Total LIABILITIES & EQUITY														

CONSOLIDATED STATEMENT OF CASH FLOWS - TESLA MOTORS
Values in USD millions

[redacted] classified at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Cash Flow from Operations														
Net Income														
Depreciation														
Net Income, adjusted														
Accounts Receivable, net														
Inventory, net														
Prepaid expenses and other current assets														
Deposits & other assets														
Accounts Payable														
Accrued Liabilities														
Income Tax Payable														
Membership Fees														
Deferred Revenue														
Warranty Reserve														
Cash Flow from Operations														
Cash Flow from Investing														
Plant, Property, Equipment														
Cash Flow from Financing														
Series A, net of costs														
Series B, net of costs														
Series C, net of costs														
Series D, net of costs														
Series E, net of costs														
Series F, net of costs														
Common Stock														
Additional paid in capital														
Deferred Compensation														
Stock Warrant														
Notes Payable and Interest-in-Kind														
DOE LGP Program														
Other Long Term Liabilities														
Cash Flow from Financing														
Cash Balance, Beginning														
Net Cash Flow														
Cash Balance, Ending														

DOE COVENANT ANALYSIS

(b) (4)

(b) (4)

(b) (4)

(b) (4)

Phase A

(b) (4)

Covenant
Actual
Test

(b) (4)

Minimum
Covenant
Actual
Test

Phase B

(b) (4)

Covenant
Actual
Test

(b) (4)

Covenant
Actual
Test

(b) (4)

Covenant
Actual
Test

(b) (4)

Covenant
Actual
Test

(b) (4)

Covenant
Actual
Test

(b) (4)

TESLA MOTORS, INC.
AUDIT COMMITTEE CHARTER

Adopted September 20, 2007

On behalf of Tesla Motors' Board of Directors, the Audit Committee (the "Committee") oversees the system of compilation of Tesla Motors' financial statements and reports, and the performance, and independence of Tesla Motors' registered public accounting firm (the "independent auditor").

The Committee acts on behalf of the Board in monitoring and overseeing the independent auditor. The Committee meets as often as it deems necessary to perform its responsibilities.

Committee Membership

The Committee will be comprised of three or more directors as determined by the Board. At least one member of the Committee will be an "audit committee financial expert" as defined by SEC rules. The members and chair of the Committee will be appointed and replaced by the Board.

Committee Authority and Responsibilities

In carrying out its oversight responsibility, the Committee will:

1. Have the direct responsibility for the appointment, compensation, retention, and oversight of the work of the independent auditor, and non-audit engagements with the independent auditor. The independent auditor will report directly to the Committee. The Committee will be responsible for resolution of disagreements between management and the independent auditor regarding financial reporting.

2. Review with the independent auditor any audit problems or difficulties, and management's response.

3. Review and approve the annual audit, and monitor its implementation.

4. Review significant findings and recommendations of the independent auditor, any other reports required under applicable governmental authority's rules to be made by the independent auditor or management, and reports and management's responses thereto.

5. Review practices designed to assure that the corporate environment provides adequate audit independence and freedom for Tesla's Finance Department to act.

6. Meet to review and discuss with management and the independent auditor the annual audited financial statements and quarterly financial statements, including associated discussion, analysis, and results of operations. Review and discuss major issues regarding accounting principles and financial statement presentations; analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements; and the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of Tesla Motors. On an annual

basis, meet to review and discuss in separate private sessions with the independent auditor, and management, the accounting policies and financial controls of Tesla Motors.

7. Review and discuss with management and the independent auditor management's report on internal control over financial reporting and the independent auditor's attestation of such report.

8. Establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

9. Review and discuss the following with appropriate representatives of management:

- Material contingent liabilities and pending litigation
- Tesla Motors' compliance programs, if any
- Policies with respect to risk assessment and risk management; and
- Compliance with the provisions of the Foreign Corrupt Practices Act.

10. As appropriate, approve the appointment of the independent auditor, and evaluate the performance of the independent each year.

11. Investigate other matters that are brought to the attention of the Committee within the scope of its mission. In performing its duties, the Committee may independently retain outside legal, accounting, or other advisors, and Tesla Motors will provide appropriate funding, as determined by the Committee, for the payment of (i) compensation of the independent auditors, (ii) compensation of any adviser employed by the Committee, and (iii) ordinary administrative expenses of the Committee necessary or appropriate in carrying out its duties.

12. Provide appropriate reports to the Board, if requested by the Board. The Committee will have such other duties as may be delegated from time to time by the Board.

FORM OF CHARTER OF THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF TESLA MOTORS, INC.

(as adopted on _____, 2010)

1. PURPOSE

The purpose of the Compensation Committee of the Board of Directors (the "**Board**") of Tesla Motors, Inc. (the "**Company**") shall be to discharge the Board's responsibilities relating to the compensation of the Company's executive officers and the administration of the Company's employee benefit plans.

The Committee shall assist the Board in administering and overseeing (i) the Company's compensation policies, plans and benefit programs, (ii) the compensation of the Company's executive officers and (iii) the administration of the Company's employee benefit plans.

2. MEMBERSHIP

The Compensation Committee members will be appointed by, and will serve at the discretion of, the Board. The Compensation Committee will consist of at least two non-employee members of the Board.

3. RESPONSIBILITIES AND AUTHORITY

The responsibilities and authority of the Compensation Committee shall include such responsibilities and authority delegated by the Board and the following:

- Recommending to the Board a compensation philosophy designed to help the Company compete with other businesses in the Company's industries for the talent that the Company needs;

- Making recommendations to the Board with respect to the Chief Executive Officer's (1) annual base salary, (2) bonus arrangements, if any, (3) equity compensation, (4) any employment agreement, severance arrangement or change in control arrangement, and (5) any other benefits, compensation or arrangements, based on an evaluation of his or her performance and other relevant criteria as determined by the Compensation Committee;

- In consultation with the Chief Executive Officer, reviewing the compensation arrangements of the other executive officers with respect to (1) annual base salary, (2) bonus arrangements, if any, (3) equity compensation, (4) any employment agreement,

severance arrangement or change in control arrangement, and (5) any other benefits, compensation or arrangements;

- Making recommendations to the Board with respect to compensation for service as a member of the Board or a Board committee;

- Making recommendations to the Board with respect to all forms of compensation plans;

- Having the sole authority to retain and terminate any compensation consultant to be used by the Company to assist in the evaluation of executive officer compensation and having sole authority to approve the consultant's fees and other retention terms. The Compensation Committee shall also have authority to obtain advice and assistance from internal or external legal, compensation, accounting or other advisors;

- Overseeing the administration of material employee benefit plans of the Company, including the Company's equity plans, benefit plans and any 401(k) plans or similar plans; and

- Reviewing its own charter, structure, processes and membership requirements.

4. MEETINGS

The Compensation Committee will meet separately as necessary to fulfill its responsibilities under this Charter. The Compensation Committee may establish its own schedule, which it will provide to the Board.

5. MINUTES

The Compensation Committee may maintain written minutes of its meetings as it deems appropriate, which minutes (if any) will be filed with the minutes of the meetings of the Board.

6. REPORTS

The Compensation Committee will summarize its examinations and recommendations to the Board as may be appropriate, consistent with the Compensation Committee's charter.

7. DELEGATION OF AUTHORITY

The Compensation Committee may form and delegate authority to one or more subcommittees where appropriate.

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit 5.1(n)-1

Historical Costs

[See attached]

TESLA MOTORS, INC.

ATVM PROGRAM HISTORICAL COST

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b))

1.0. Background

1.1. As part of our agreement with the Department of Energy related to the Advanced Technology Vehicles Manufacturing Incentive Program ("ATVM Program"), Tesla Motors is documenting the historical costs associated with Project P and Project S since their inception through December 15, 2008 (Tesla Motors' ATVM application date of "Substantially Complete" designation). This document provides the methodology the company used to document such costs.

1.2. (b) (4) [redacted]

1.3. (b) (4) [redacted]

1.4. (b) (4) [redacted] have historically been the primary method for delineating incurred expenses between projects within the company. Mapping of these groupings to various Tesla Motors projects serves as one of the primary foundations of this documentation.

2.0. Methodology

2.1. Salaries

a Payroll records, previously provided to external auditors for Tesla Motors' annual financial audits, were analyzed. (b) (4) [redacted]

2.2. Benefits and Employment Taxes

a (b) (4) [redacted]

b (b) (4) [redacted]

2.3. Contract and Professional Services

a [redacted]

[redacted] is a primary vendor to Tesla for multiple projects throughout the historical period. The expenses were gathered by year as follows:

Q1 2004 – Q1 2007 - Expense transactions related to [redacted] were extracted from (b) (4) [redacted]

Q2 2007 – 12/15/2008 – (b) (4) [redacted]

b **Other Contract Labor and Outside Services:**

Q1 2004 – Q1 2007 - (b) (4) [redacted]

Q2 2007 – Q4 2007 – (b) (4) [redacted]

Q1 2008 -- 12/15/2008 – Expense transactions were extracted from (b) (4) and mapped to Project P and S based on (b) (4) provided by Tesla Finance.

2.4. Rent

a Rent costs are for the [redacted] and are calculated based on the lease amortization schedule which was used as a basis for lease expense in our audited financial statements.

2.5. Office Expenses, Travel, Meals, Other

a *Q1 2004 – Q1 2007* - Expense transactions in these related GL accounts were extracted from (b) (4) and mapped to Projects P and S (b) (4)

b *Q2 2007 – Q4 2007* – (b) (4)

c *Q1 2008 – 12/15/2008* – Expense transactions were extracted from (b) (4) and mapped to Project P and S (b) (4)

2.6. Expensed Tools and Materials, Freight & Duties

Q1 2004 – Q1 2007 - Expense transactions in these related GL accounts were extracted from (b) (4) and mapped to Projects P and S classes (b) (4)

Q2 2007 – Q4 2007 – (b) (4)

Q1 2008 – 12/15/2008 – Expense transactions were extracted from (b) (4) and mapped to Project P and S (b) (4)

2.8. Subsidiary Expenses

In order to ease data gathering and validation Tesla kept these expenses as consolidated line items rather than split out various expense components.

a

[redacted]

a [redacted]

2.8. Capital Equipment

a *2005 – 2006* – Extracted (b) (4) fixed asset transaction details by cost center by year and mapped to Projects P and S (b) (4) [redacted]

b *2007 – 12/15/2008* – (b) (4) [redacted]

c (b) (4) – Capital equipment for (b) (4) were (b) (4) [redacted] audited by PwC on an annual basis.

1 Tesla Motors, Inc.
2 **ATVM HISTORICAL EQUITY CONTRIBUTIONS**
3
4

	2003	2004	2005	2006	2007	2008*	Total
5 **Project P**							
6 Salaries							
7 Benefits and Employment Taxes							
8 Contract / Professional Services							
9 Rent							
10 Office Expenses, Travel, Meals, Etc.							
11 Expensed Tools & Materials, Freight & Duties							
12 Subsidiary Expense							
13 Capital Equipment							
14							
15 Total							
16							
17							
18 **Project S**							
19 Salaries							
20 Benefits and Employment Taxes							
21 Contract / Professional Services							
22 Rent							
23 Office Expenses, Travel, Meals, Etc.							
24 Expensed Tools & Materials, Freight & Duties							
25 Subsidiary Expense							
26 Capital Equipment							
27							
28 Total							

29
30 * 2008 expenses exclude items incurred after 12/15/08.

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Exhibit 5.1(n)-2

Eligible Project Costs

[See attached]

Project S[redacted]

Historical Cost	[redacted]
Total Eligible Cost Budget	
Total Incurred to Date	
ATVM % of Total Costs	
Loan Amount	363,860,436

	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09
Expenses	[redacted]									
Salaries										
Benefits and Employment Taxes										
Contract Services										
Expensed Tools & Materials										
Freight & Duties										
Insurance										
Office Expenses										
Professional Services										
Rent										
Tax and License										
Travel and Meals										
Capital Investments										
Total Eligible Costs										

Project P [redacted] P[redacted]

Historical Cost	[redacted]
Total Eligible Cost Budget	
Total Incurred to Date	
ATVM % of Total Costs	
Loan Amount	101,186,524

	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09
Expenses	[redacted]									
Salaries										
Benefits and Employment Taxes										
Contract Services										
Expensed Tools & Materials										
Freight & Duties										
Insurance										
Office Expenses										
Professional Services										
Rent										
Tax and License										
Travel and Meals										
Capital Investments										
Total Eligible Costs										

SOLVENCY CERTIFICATE

Pursuant to Section 5.1(c) of the Loan Arrangement and Reimbursement Agreement, dated January 20, 2010 (as it may be amended, supplemented or otherwise modified, the "Arrangement Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings as therein defined), by and between TESLA MOTORS, INC., a Delaware corporation (the "Borrower") and the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America, the undersigned chief financial officer of the Borrower, on behalf of the Borrower and not individually, hereby certifies as follows:

1. I have reviewed the terms of the Arrangement Agreement and the definitions and provisions contained in the Arrangement Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

2. Based upon my review and examination described in paragraph 1 above, I certify, that on and as of the date hereof and, upon and after giving effect to the transactions contemplated by the Transaction Documents, with respect to each Obligor:

(a) the sum of such Obligor's debt and liabilities (including contingent liabilities) does not exceed the present fair saleable value of such Obligor's present assets;

(b) such Obligor's capital is not unreasonably small in relation to its business as contemplated on the date hereof and reflected in the Business Plan; and

(c) such Obligor has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise).

3. For purposes of paragraph 2, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U S C. § 552(b)).

IN WITNESS WHEREOF, the Borrower, through the undersigned, has made and delivered the foregoing certifications as of January 20, 2010.

TESLA MOTORS, INC.

Name: Deepak Ahuja
Title: Chief Financial Officer

[Signature Page to Solvency Certificate]

BORROWER CERTIFICATE
(For Closing)

(Delivered pursuant to Section 5.1 of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: January 20, 2010

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Borrower Certificate is delivered to you pursuant to Section 5.1 of the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "Arrangement Agreement"), by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Borrower Certificate shall have their respective meanings specified in the Arrangement Agreement.

On behalf of the Borrower, I, Deepak Ahuja, HEREBY CERTIFY that I am the duly elected and qualified Chief Financial Officer of the Borrower and FURTHER CERTIFY that, as of the date hereof:

1. Pursuant to Section 5.1(e) of the Arrangement Agreement, the updated Information Certificate substantially in the form of the original version thereof executed and delivered on June 23, 2009, together with a comparison showing all changes from such original version, was delivered to DOE on or prior to January 20, 2010, and all information disclosed thereon remains true and correct on and as of the date hereof.

2. Pursuant to Section 5.1(f)(i) of the Arrangement Agreement, the information contained in the Application, together with all other information delivered by or on behalf of the Borrower or any Subsidiary in connection with such Application and the negotiation of the Transaction Documents, including the Information Certificate and the Collateral Schedules, is true and complete in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements were made (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified);

3. Pursuant to Section 5.1(f)(ii) of the Arrangement Agreement, no event has occurred that has caused (x) the Borrower to cease to be an Eligible Applicant, as defined in the

Applicable Regulations, or (y) any Project to cease to be an Eligible Project, as defined in the Applicable Regulations;

4. Pursuant to Section 5.1(i) of the Arrangement Agreement, (i) neither the Borrower nor any of its Subsidiaries has a judgment lien against any of their respective properties for a debt owed to the United States of America and (ii) neither the Borrower nor any of its Subsidiaries has an outstanding debt (other than a debt under the Code) owed to the United States of America or any agency thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R.§ 285.13(d);

5. Pursuant to Section 5.1(j) of the Arrangement Agreement, (x) no Indebtedness of the Borrower or any Subsidiary is outstanding other than Indebtedness permitted under clauses (b) and (e) of Section 9.2 of the Arrangement Agreement and other Indebtedness permitted by Section 9.2 of the Arrangement Agreement to the extent described on Schedule D-4 to the Information Certificate, (y) the existing agreements in favor of City National Bank have been amended to limit the Liens created by such agreements to the equipment and restricted deposits identified on Schedule D-4 to the Information Certificate and (z) Wells Fargo Bank, National Association shall have consented to the Collateral Trustee's Lien on the Borrower's previously unencumbered and unrestricted liquid assets;

6. Pursuant to Section 5.1(o) of the Arrangement Agreement, all Governmental Approvals and other consents, approvals and waivers listed on Schedule 6.6 to the Information Certificate that are required to be obtained on or prior to the Principal Instrument Delivery Date, each in form and substance satisfactory to DOE, have been duly obtained, (ii) true and complete copies thereof are attached to the Secretary's Certificate of Borrower or have otherwise been delivered to DOE on or prior to the date hereof, and (iii) such consents, approvals and waivers are in full force and effect and that all applicable waiting periods have expired without any action being taken or threatened which would restrain, prevent or otherwise impose adverse conditions on the Borrower;

7. Pursuant to Section 5.1(q) of the Arrangement Agreement, Borrower and its Subsidiaries own or have the right to use all Intellectual Property necessary for the Projects;

8. Pursuant to Section 5.1(r) of the Arrangement Agreement, attached hereto as Exhibit 5.1(r) is the Borrower's strategy with respect to foreign exchange which the Borrower believes to be commercially reasonable;

9. Pursuant to Section 5.1(s) of the Arrangement Agreement, (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S, and (iii) the Cash Equity Condition is satisfied;

10. Pursuant to Section 5.1(v) of the Arrangement Agreement, each of the representations and warranties made by the Borrower and Tesla Motors New York LLC in or pursuant to

the Loan Documents is true and correct in all material respects (except such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect, which representations and warranties are true and correct in all respects) on and as of the date hereof; and

11. Pursuant to Section 5.1(x) of the Arrangement Agreement, attached hereto as Exhibit 5.1(x) is the Deer Creek Lease, and such lease has not been amended, modified, terminated, or supplemented since August 6, 2009.

12. Pursuant to Annex A of the Arrangement Agreement, attached hereto as Exhibit A is the Authorized Transmitter Schedule.

IN WITNESS WHEREOF, the undersigned has executed this Borrower Certificate as of the date first written above.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

Exhibit 5.1(r)

Foreign Exchange Strategy

[See attached]

Tesla Motors, Inc.
Foreign Exchange (FX) Risk Management Policy
Dec 5, 2008

I. Purpose:

The purpose of this document is to establish **Tesla Motors'** (the Company's) Policy for the management of corporate foreign exchange risk by defining its exposures, measuring them, and defining appropriate actions to control the risk. Furthermore, this Policy is in place to minimize the income statement impact of fluctuating foreign currency exchange rates that can adversely impact revenues and expenses.

II. Definitions:

Economic Exposure: is the unexpected change between anticipated net cash flow in currencies other than the US Dollar and the actual results that are entered on the company's consolidated financial statements. It encompasses transaction and translation exposures, as well as exposures not explicitly recognized in financial statements. Economic exposures would indicate anticipated accounts receivable and accounts payable that are not priced in US Dollars, with respect to which the Company cannot adjust the pricing or costs in time to eliminate an exchange gain/loss. In essence, economic risk concerns the impact that exchange rates can have on future operations.

(b) (4) [redacted]

Transaction Exposure: is the net cash flow in currencies other than the US Dollar between the time the transaction is entered on the Company's financial statements and the time the actual cash payment is made. It refers to changes in USD value of non-functional-currency-denominated monetary assets and liabilities subject to FAS 52 re-measurement, firm commitments, and anticipated/forecast cash flows, due to currency fluctuations between the time an exposure is identified and settles. Examples of transaction exposures include:

- Non-functional currency accounts receivable and payable;
- Non-functional currency inter-company loans, with maturities of less than 12 months;
- Non-functional currency sales and purchase orders; and,
- Highly probable but not yet booked (e.g., forecast or budgeted) non-functional currency revenues and/or expenses.
- Foreign currency gains/losses on monetary assets and liabilities due to changes in spot exchange rates during a reporting period pass to earnings that period.

Gains/losses on firm commitments and forecast transactions do not pass to earnings, but represent true economic exposure for the firm.

Translation Exposure: occurs from the need to convert foreign currency financial statements into US Dollars for consolidation purposes. The conversion from local currency to the USD for subsidiaries whose functional currency is the US Dollar results in exchange gains and losses (translation adjustments) that are included in income.

The conversion for subsidiaries whose functional currency is their local currency results in translation adjustments that are recorded to equity.

Functional Currency: is an accounting term that is outlined in Financial Accounting Standard 52 and defines the currency in which an entity's financial statements shall be measured before being restated into US Dollars.

III. Hedging Policy:

[redacted]

[redacted]

[redacted]

Management of the Hedging Program

The Foreign Exchange Policy will be generally implemented, reviewed, and monitored by the Investment Review Committee, which shall consist of the Chief Executive Officer, Chief Financial Officer, Controller and VP Finance. The Committee will also approve the list of designated financials institutions with which Tesla will establish relationships for the purpose of conducting FX currency transactions.

Hedging Instruments

The Company will generally use the following instruments to manage currency exposure:

- [redacted]
- [redacted]
- [redacted]

When choosing among instruments, the FX Risk Manager shall consider several factors, including:

- [redacted]
- [redacted]

The Company will be authorized to use these instruments in conjunction with the responsibilities outlined in section IV.

IV. Structure, Responsibility and Authority:

A. Responsibilities of the Audit Committee

The Audit Committe has the following responsibilities with respect to the management of the Company's FX Risk Management Policy:

- [redacted]
- [redacted]

B Responsibilities of the (b) (4)

The (b) (4) has the following responsibilities with respect to the management of the Company's FX Risk Management Policy:

- [redacted]
- [redacted]
- [redacted]

C. Responsibilities of the (b) (4)

The (b) (4) has the following responsibilities with respect to the management of the Company's FX Risk Management Policy:

- [redacted]
- [redacted]

[redacted]

D. Responsibilities of (b) (4)

The (b) (4) has the following responsibilities with respect to the management of the Company's FX Risk Management Policy:

- [redacted]
- [redacted]

D. Responsibilities of (b) (4)

The (b) (4) has the following responsibilities with respect to the management of the Company's FX Risk Management Policy:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

V. Reporting:

A. Report Contents

The (b) (4) will prepare a monthly Foreign Exchange Report on accounting exposures that contains the following information:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

B. Report Distribution

The monthly Foreign Exchange Report will be distributed to the (b) (4) and the (b) (4)

VI. Internal Controls:

[redacted]

A. Qualification of Financial Institution

The bank authorized to conduct foreign exchange business with the Company will, if based in the US, be a member of the Federal Deposit Insurance Corporation (FDIC).

B. Notice to FX Advisor

[redacted]

[redacted]

VII. Review of Foreign Exchange Management:

A. Policy Expectations

(b) (4)

[redacted]

B. Policy Review

This Foreign Exchange Policy will be reviewed annually to ensure that it remains consistent with the overall objectives of the Company and with current financial trends. The Policy may be reviewed and updated more frequently if conditions dictate. Proposed amendments to the Policy would be approved by the Audit Committee..

Exhibit 5.1(x)

Deer Creek Lease

[See attached]

COMMERCIAL LEASE

THIS LEASE is entered into as of August 6, 2009 (the ***"Effective Date"***), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (***"Landlord"***), and TESLA MOTORS, INC., a Delaware corporation (***"Tenant"***).

1. BASIC LEASE INFORMATION. The following is a summary of basic lease information. Each item in this Article 1 incorporates all of the terms set forth in this Lease pertaining to such item and to the extent there is any conflict between the provisions of this Article 1 and any other provisions of this Lease, the other provisions shall control. Any capitalized term not defined in this Lease shall have the meaning set forth in the Glossary that appears at the end of this Lease.

Premises: 25.28 acres of real property located at 3500 Deer Creek Road, containing three (3) adjoined buildings totaling approximately 350,000 square feet of Rentable Area, as more particularly described on **Exhibit A-1**.

Term: Approximately Seventy-eight (78) months

Scheduled Commencement Date: August 20, 2009

Expiration Date: January 31, 2016

Base Rent:

Period During Lease Term	Dates	Monthly Base Rent
Free Rent Period	18 months	$0
Initial Rent Period	End of Free Rent Period through 1/31/13	$165,000
Second Rent Period	2/1/13-1/31/15	$175,000
Third Rent Period	2/1/15-1/31/16	$185,000

Security Deposit: $330,000 (subject to Section 5.4)

Use: Research and development, distribution, assembly and manufacturing, storage and general office in support of the research and development function, and those functions commonly associated with a headquarters location.

Addresses for Notice:

Landlord:	The Board of Trustees of the Leland Stanford Junior University 2755 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Attention: Managing Director, Real Estate
with a copy to:	Carol K. Dillon, Esq. Bingham McCutchen LLP 1900 University Avenue East Palo Alto, CA 94303
Tenant:	Tesla Motors, Inc. 1050 Bing Street San Carlos, CA 94070 Attention: JB Straubel, CTO
with a copy to:	Tesla Motors, Inc. 1050 Bing Street San Carlos, CA 94070 Attention: Craig Harding, General Counsel and Secretary
Brokers:	Tenant: Cornish & Carey Commercial Landlord: CB Richard Ellis

2. PREMISES

2.1. Premises. Subject to the terms, covenants and conditions set forth in this Lease, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The approximate total Rentable Area of the Premises is specified in Article 1, and shall not be subject to adjustment by either Landlord or Tenant during the Term. The buildings located at the Premises are sometimes referred to herein as the "***Buildings***".

2.2. Parking. Tenant shall have the right to use, at no additional cost, all of the parking spaces located in the parking areas of the Premises (the "***Parking Area***"). Other than the temporary staging and storage of Tenant's inventory, products, and other non-hazardous materials being delivered to the Premises, Tenant shall not store any materials or equipment on any exterior areas of the Premises without the prior written consent of Landlord. Tenant shall not make any use of the Parking Area that reduces the number of available parking spaces. Tenant shall not permit any employee vehicles to be parked on any adjacent property or public streets.

2.3. Service Yard. Notwithstanding the general description of the Premises, the Premises shall not include and Tenant shall not have the right to use or access the service yard area behind Building 25, as identified on the attached **Exhibit A-2** (the "***Service Yard***"). Landlord reserves (for itself, its Agents, consultants, contractors and any third parties Landlord deems to reasonably require access) the exclusive right to use and access the Service Yard for purposes of performing environmental testing, monitoring, cleanup, remediation, containment or restoration work; provided that Landlord shall not materially interfere with Tenant's access to and use of the loading docks located on the Premises.

Landlord may elect in its sole discretion to allow Tenant a license to use portions of the Service Yard, subject to terms and conditions to be determined by Landlord.

3. ACCEPTANCE

Prior to entering into this Lease, Tenant has made a thorough and independent examination of the Premises and all matters related to Tenant's decision to enter into this Lease. Tenant is thoroughly familiar with all aspects of the Premises and its construction and is satisfied that it is in an acceptable condition and meets Tenant's needs. Except as otherwise expressly provided in Section 8.1 and 9.1 below, Tenant does not rely on, and Landlord does not make, any express or implied representations or warranties as to any matters including, without limitation, (a) the physical condition of the Premises, the Buildings, the Building Structure, or the Building Systems (including, without limitation, the indoor air quality), (b) the existence, quality, adequacy or availability of utilities serving the Premises, (c) the size of the Premises or the Buildings, (d) the use, habitability, merchantability, fitness or suitability of the Premises for Tenant's intended use, (e) the likelihood of deriving business from Tenant's location or the economic feasibility of Tenant's business, (f) Hazardous Materials on, in, under or around the Premises, (g) zoning, entitlements or any Applicable Laws which may apply to Tenant's use of the Premises or business operations, or the Premises' compliance with Applicable Laws, or (h) any other matter. Tenant has satisfied itself as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. Subject to the provisions of Section 9.1, Tenant accepts the Premises (including the Building Systems) in its existing "as-is" condition. Tenant shall, by entering into and occupying the Premises, be deemed to have accepted the Premises and to have acknowledged that the same are in good order, condition and repair. Without limiting the foregoing, Tenant acknowledges the Premises are being delivered to Tenant in a post-demolition state in anticipation of the commencement of the Tenant Improvement Work and that potential physical hazards may be present. Tenant agrees to cause all of Tenant's Agents to observe best safety practices while on the Premises (e.g. wearing hard hats and eye protection, utilizing flashlights, etc.) during the performance of the Tenant Improvement Work. Upon the Commencement Date, Tenant shall execute and deliver to Landlord the acceptance form attached hereto as **Exhibit B**; provided that Tenant's failure to do so shall not be deemed a failure of acceptance or delay the Commencement Date.

4. TERM

4.1. Term. The Premises are leased for a term (the ***"Term"***) commencing on the date Landlord delivers to Tenant possession of the Initial Space (as defined in Section 4.2), which shall occur pursuant to Sections 4.4 and/or 4.5 (the ***"Commencement Date"***), and ending on the Expiration Date, or such earlier date on which this Lease terminates pursuant to its terms. The date upon which this Lease actually terminates, whether by expiration of the Term or earlier termination pursuant to the terms of this Lease, is sometimes referred to in this Lease as the ***"Termination Date"***.

4.2. Failure to Deliver Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant on the Scheduled Commencement Date, then (a) the validity of this Lease and the obligations of Tenant under this Lease shall not be affected by any such delay in delivery, nor shall any such delay result in any extension of the Expiration Date, and (b) Tenant shall have no claim against Landlord arising out of Landlord's failure to deliver possession of the Premises on the Scheduled Commencement Date. Notwithstanding the foregoing, the parties agree and acknowledge that Tenant initially intends to occupy approximately 217,000 square feet of Rentable Area consisting of the ground floor of Building 25 and the basement, ground floor and second floor of Building 26 (collectively, the ***"Initial Space"***), and in the event Landlord does not deliver the Initial Space by October 1, 2009, Tenant may terminate this Lease by written notice to Landlord delivered no later than October

31, 2009, whereupon any consideration paid to Landlord by Tenant shall be returned to Tenant, and thereafter the parties shall have no further rights or obligations under this Lease. In the event of any delay in the delivery of the Initial Space caused by Landlord that does not result in the termination of this Lease, the Term of this Lease shall be reduced by the number of days delivery is delayed, the Commencement Date shall be the date of actual delivery of possession of the Initial Space and the Expiration Date shall not be changed or extended. In such event, Tenant shall retain the benefit of the full Free Rent Period described in Article 1, but the Base Rent for the remainder of the Term shall be modified so that each day of delay in the commencement of this Lease shall result in a one-day reduction in the Initial Base Rent Period. By way of example only, if there is a five (5) day delay in the delivery of the Initial Space, and the Commencement Date is August 6, 2009, the Free Rent Period will run from August 6, 2009 through February 5, 2011, but the Initial Rent Period will remain in effect only through January 31, 2013. No extension of free rent or termination right shall result from any delay in the delivery of the remaining space on the Premises.

4.3. Early Access. Tenant shall have the right upon twenty-four (24) hours prior notice to Landlord to enter upon the Premises prior to the Commencement Date for purposes of designing the Tenant Improvement Work, provided that Tenant shall not interfere with Landlord's performance of Landlord's Work and all such early entry shall be subject to the terms and conditions of this Lease and of that certain Access Agreement between the parties dated as of June 10, 2009, except for the obligation to pay Rent hereunder.

4.4. Air Quality Contingency. Prior to the Commencement Date, Landlord will perform indoor air quality sampling in the ground floor of Buildings 25 and the basement of Building 26, and Landlord will provide the results of such testing to Tenant. If the testing reveals the presence of volatile organic compounds at concentrations exceeding the environmental screening levels for commercial buildings (the ***"Indoor Air Screening Level"***), as established by the California Regional Water Quality Control Board (***"RWCQB"***), Landlord shall have the right to either terminate this Lease upon written notice to Tenant delivered within five (5) Business Days after delivery of the results to Tenant, or to undertake such commercially reasonable remediation efforts as Landlord determines in order to remediate the indoor air quality of any Building exceeding the Screening Level. If Landlord undertakes such remediation, upon completion of the remediation Landlord shall retest the Buildings and provide the results of such subsequent testing to Tenant. If any such retesting reveals that the affected Building(s) still exceed the Indoor Air Screening Level, Landlord may elect to terminate this Lease rather than deliver possession of the Premises to Tenant. If Landlord does not so elect, Landlord shall deliver possession of the Premises to Tenant, and the date of such delivery shall be the Commencement Date. In such event, Tenant may terminate this Lease within ten (10) Business Days after the Commencement Date. If this Lease is terminated by either party, neither party shall have any further rights or obligations hereunder. In the event this Lease is not terminated pursuant to this Section, Landlord shall have no further obligations during the Term with respect to the indoor air quality of the Buildings.

4.5. Wipe Sampling Contingency. Prior to the Commencement Date, Landlord will perform wipe sampling for analysis of selected metals on surfaces in multiple locations in the interstitial and attic levels in Buildings 25 and the basement, interstitial and attic levels of Building 26, and Landlord will provide the results of such testing to Tenant. If the testing reveals the presence of metals at concentrations exceeding screening criteria developed by the California Department of Toxic Substances Control personnel (*Human Health Risk Evaluation of Structural Surfaces Contaminated with Metals*, presented at the Society of Toxicology Meeting, Salt Lake City, Utah, March 2003) for commercial buildings (the ***"Wipe Sampling Screening Level"***), Landlord shall have the right to either terminate this Lease upon written notice to Tenant delivered within five (5) Business Days after delivery of the results to Tenant, or to undertake such commercially reasonable remediation efforts as Landlord determines in order to remediate the surfaces of any Building exceeding the Wipe Sampling

Screening Level. If Landlord undertakes such remediation, upon completion of the remediation Landlord shall retest the Buildings and provide the results of such subsequent testing to Tenant. If any such retesting reveals that the affected Building(s) still exceed the Wipe Sampling Screening Level, Landlord may elect to terminate this Lease rather than deliver possession of the Premises to Tenant. If Landlord does not so elect, Landlord shall deliver possession of the Premises to Tenant, and the date of such delivery shall be the Commencement Date. In such event, Tenant may terminate this Lease within ten (10) Business Days after the Commencement Date. If this Lease is terminated by either party, neither party shall have any further rights or obligations hereunder. In the event this Lease is not terminated pursuant to this Section, Landlord shall have no further obligations during the Term with respect to the presence of the tested metals in any of the Buildings.

4.6. Renewal Options. Tenant shall have two (2) consecutive options (respectively, the ***"First Renewal Option"*** and the ***"Second Renewal Option"*** and collectively, the ***"Renewal Options"***) to extend the Term of this Lease. Each Renewal Option shall be for a term of twenty-four (24) months (respectively, the ***"First Renewal Term"*** and the ***"Second Renewal Term"*** and collectively, the ***"Renewal Terms"***). Any Renewal Option shall be void if an Event of Default by Tenant exists, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term. Each Renewal Option must be exercised, if at all, by written notice from Tenant to Landlord given not less than twelve (12) months prior to the expiration of the then current Term. Landlord shall have the right to cancel any Renewal Option in the event Landlord intends to redevelop the Premises, which shall be demonstrated by a submittal of redevelopment plans to the City of Palo Alto at any time during the Term; provided that Landlord delivers written notice to Tenant of Landlord having made such submittal within thirty (30) days after Landlord's receipt of Tenant's notice exercising its Renewal Option. The Renewal Terms shall be upon the same terms and conditions as set forth in this Lease, except that the monthly Base Rent payable hereunder shall be as follows:

Renewal Term	Monthly Base Rent
First Renewal Term:	
2/1/16-1/31/17	$195,000
2/1/17-1/31/18	$200,000
Second Renewal Term:	
2/1/18-1/31/19	$205,000
2/1/19-1/31/20	$210,000

Tenant shall not be entitled to any tenant improvement allowance during any Renewal Term. From and after the exercise of each Renewal Option (a) all references to "Expiration Date" shall be deemed to refer to the last day of the applicable Renewal Term, and (b) all references to "Term" shall be deemed to include the applicable Renewal Term. The Renewal Options are personal to Tenant and shall be inapplicable and null and void if Tenant assigns its interest under this Lease to any Transferee other than a Permitted Transferee. Tenant's right to exercise the Second Renewal Option is contingent on Tenant having exercised the First Renewal Option.

5. RENT

5.1. Base Rent. Commencing upon the Commencement Date, and thereafter during the Term, Tenant shall pay to Landlord the monthly Base Rent specified in Article 1 on or before the first day of each month, in advance, at the address specified for Landlord in Article 1, or at such other place as Landlord designates in writing, without any prior notice or demand and without any deductions or setoff whatsoever (except as otherwise expressly provided in this Lease). If the Commencement Date occurs on a day other than the first day of a calendar month, or the Termination Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month will be prorated on the basis of the actual number of days in such month. The Rentable Area of the Premises shall be conclusively presumed to be as stated in Article 1.

5.2. Additional Rent. All sums due from Tenant to Landlord or to any third party under the terms of this Lease (other than Base Rent) shall be additional rent (***"Additional Rent"***), including without limitation all sums incurred by Landlord due to Tenant's failure to perform its obligations under this Lease. Tenant's obligation to pay Additional Rent shall commence on the Commencement Date. All Additional Rent that is payable to Landlord shall be paid at the time and place that Base Rent is paid, unless otherwise specifically provided in this Lease. Landlord will have the same remedies for a default in the payment of any Additional Rent as for a default in the payment of Base Rent. Together, Base Rent and Additional Rent are sometimes collectively referred to in this Lease as ***"Rent"***.

5.3. Late Payment. Tenant recognizes that late payment of any Rent will result in administrative expense to Landlord, the extent of which expense is difficult and economically impracticable to determine. Therefore, Tenant agrees that if Tenant fails to pay any Rent within five (5) days after its due date, an additional late charge of five percent (5%) of the sums so overdue shall become immediately due and payable, and unpaid Rent shall thereafter accrue interest at the Interest Rate until paid. Tenant agrees that the late payment charge is a reasonable estimate of the additional administrative costs and detriment that will be incurred by Landlord as a result of such failure by Tenant. In the event of nonpayment of interest or late charges on overdue Rent, Landlord shall have, in addition to all other rights and remedies, the rights and remedies provided in this Lease and by law for nonpayment of Rent. Notwithstanding the foregoing, Landlord will not assess a late charge or interest payment until Landlord has given written notice of such late payment for the first late payment in any twelve (12) month period and after Tenant has not cured such late payment within three (3) days from receipt of such notice. No other notices will be required during the following twelve (12) months for a late charge and interest to be incurred.

5.4. Security Deposit. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord the Security Deposit described in Article 1 in the form of a letter of credit. The Security Deposit shall be payable upon any of the occurrences described in this Section. The Security Deposit shall be held by Landlord as security for the faithful performance of this Lease by Tenant of all of the terms, covenants and conditions of this Lease.

(a) If there is an Event of Default by Tenant with respect to any provisions of this Lease (including but not limited to the payment of Rent); if Tenant files a petition in bankruptcy, insolvency, reorganization, dissolution or liquidation under any law; makes an assignment for the benefit of its creditors; consents to or acquiesces in the appointment of a receiver of itself or the Premises, or if a court of competent jurisdiction enters an order or judgment appointing a receiver of Tenant or the Premises; or if a court of competent jurisdiction enters an order or judgment approving a petition filed against Tenant under any bankruptcy, insolvency or liquidation law, then in any such case Landlord may, without waiving any of Landlord's other rights or remedies under this Lease, apply the Security Deposit in whole or in part to remedy any failure by Tenant to pay any sums due under this Lease, to repair or

maintain the Premises, to perform any other terms, covenants or conditions contained in this Lease, to compensate Landlord for any loss or damages which Landlord may suffer as a result thereof, including without limitation any lost rent to which Landlord is entitled in the event the Lease terminates or is rejected as a result of any of the foregoing. Should Landlord so apply any portion of the Security Deposit, Tenant shall replenish the Security Deposit to the original amount within ten (10) days after written demand by Landlord.

(b) Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant has fully complied with all of the terms, covenants and conditions of this Lease, the Security Deposit (less any amount previously refunded or applied to cleaning, repairing damage to the Premises caused by Tenant or otherwise applied in accordance with the provisions of this Lease) shall be returned to Tenant within thirty (30) days after the Expiration Date and after delivery of possession of the Premises to Landlord in the manner required by this Lease. In the event of any Assignment of this Lease by Tenant, such Assignment shall be deemed to include an assignment of Tenant's rights to recover the Security Deposit, and Landlord's agreement to return the Security Deposit shall run only to Tenant's assignee and not to the original Tenant. Tenant hereby expressly waives the provisions of California Civil Code Section 1950.7 except for 1950.7(b) or under any similar law, statute or ordinance now or hereafter in effect.

(c) The letter of credit that Tenant uses as the Security Deposit shall be issued by a money-center bank (a solvent, nationally recognized bank with a long term rating of BBB, or higher, under the supervision of the Superintendent of Banks of the State of California, or a national banking association, which accepts deposits, maintains accounts, has a local California office which will negotiate a letter of credit, and whose deposits are insured by the FDIC) reasonably approved by Landlord (the ***"L-C Bank"***) and shall be in a form that is acceptable to Landlord in Landlord's reasonable discretion. The L-C Bank shall be a bank that accepts deposits, maintains accounts, has a local Santa Clara County office that will negotiate the letter of credit, or if no local office then the letter of credit shall provide for draws by Landlord upon delivery of the written draw request by courier or by fax (to be confirmed by telephone and with original to follow within three (3) Business Days) and payment to be made by wire transfer to Landlord's account as directed by Landlord upon receipt of the original or fax request. If Landlord notifies Tenant in writing that the L-C Bank that issued the letter of credit has become financially unacceptable, then Tenant shall have thirty (30) days to provide Landlord with a substitute letter of credit complying with all of the requirements hereof and issued by a L-C Bank reasonably approved by Landlord. In addition, if the L-C Bank is declared insolvent by the FDIC or otherwise closes, Tenant shall immediately provide Landlord with cash in the amount of the Security Deposit or a substitute letter of credit complying with all of the requirements hereof and issued by a L-C Bank reasonably approved by Landlord. If Tenant does not so provide Landlord with cash in the amount of the Security Deposit or a substitute letter of credit within the applicable time period, such failure shall constitute an Event of Default hereunder and, in addition to any other rights or remedies available hereunder, Landlord shall have the right to draw upon the current letter of credit. Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining or extending the letter of credit. The letter of credit shall be available by draft at sight, subject only to receipt by the L-C Bank of a statement from Landlord certifying that an Event of Default or other matter allowing Landlord to draw upon the Security Deposit under the terms of this Lease has occurred. The letter of credit shall: (i) name Landlord as beneficiary; (ii) allow Landlord to make partial and multiple draws thereunder up to the face amount, as determined by Landlord in its sole discretion; and (iii) provide that Landlord can freely transfer it upon an assignment or other transfer of its interest in the Lease to the assignee or transferee, without charge to Landlord and without recourse, and without having to obtain the consent of Tenant or the L-C Bank. If transfer fees are assessed as a result of any transfer of the letter of credit by Landlord, Tenant shall pay such fees. Tenant shall cause the letter of credit to be transferred to Landlord's assignee or transferee within ten (10) Business Days after Landlord's

written request, subject to Landlord surrendering the original letter of credit if a replacement letter of credit will need to be obtained. The letter of credit shall by its terms expire not less than one (1) year from the date issued, and shall provide for automatic one (1) year extensions unless Landlord is notified in writing not less than sixty (60) days prior to such expiration from the L-C Bank that the letter of credit will not be extended. In any event, unless Tenant deposits with Landlord a comparable cash Security Deposit or a replacement letter of credit, said letter of credit shall be renewed by Tenant for successive periods of not less than one (1) year throughout the Term. The letter of credit shall be maintained in effect, whether through renewal or extension, for the period from the Commencement Date and continuing until the date that is thirty (30) days after the Expiration Date. Tenant's failure to so deliver, renew (including specifically but not limited to the delivery to Landlord of such renewal not less than thirty (30) days prior to expiration of the letter of credit) and maintain such letter of credit, shall be an Event of Default and shall entitle Landlord to draw upon such letter of credit. If any portion of the letter of credit is drawn upon, Tenant shall, within ten (10) days after written demand therefor from Landlord, reinstate the letter of credit to the amount then required under this Lease, and Tenant's failure to do so shall be an Event of Default. The letter of credit shall not be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord.

(d) If Tenant receives a written commitment letter from the United States Department of Energy for funding under its Advanced Technology Vehicle Manufacturing Loan Program for the power train facility and production of EV power train components in an amount no less than Seventy-Five Million Dollars ($75,000,000, and Landlord receives the Rent owed by Tenant under this Lease for the nineteenth (19th) month of the Term, the Security Deposit shall be reduced to One Hundred Sixty-Five Thousand Dollars ($165,000). Landlord acknowledges that the loan will be funded based upon costs incurred and will have a draw down period of approximately three years.

6. USE OF PREMISES AND CONDUCT OF BUSINESS

6.1. Permitted Use. Tenant may use and occupy the Premises during the Term solely for the uses specified and permitted in Article 1 and for no other purpose without the prior written consent of Landlord, such consent to be granted or withheld in Landlord's sole and unfettered discretion. Tenant's use of the Premises shall in all respects comply with all Applicable Laws (as defined in Section 11.1).

6.2. Prohibited Uses. Tenant shall not use the Premises or allow the Premises to be used for any illegal or immoral purpose, or so as to create waste, or constitute a private or public nuisance. Tenant shall use reasonable efforts to maintain cooperative relations with the occupants of neighboring buildings, including residential neighborhoods in the vicinity of the Premises. Such cooperation shall include, as reasonably requested by Landlord (a) sending a representative to community meetings, (b) responding to complaints regarding operational issues (i.e. lighting, parking, noise, etc.), and (c) advising Tenant's employees regarding issues of concern to Tenant's neighbors. Tenant shall not use Deer Creek Road for any staging or loading purposes and shall not block or restrict traffic on Deer Creek Road at any time. Tenant shall not place any loads upon the floors, walls, or ceiling that endanger the structure, or overload existing electrical or other mechanical systems. Tenant shall not use any machinery or equipment which causes any substantial noise or substantial vibration. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or outside of the Premises except in trash containers placed inside exterior enclosures designated by Landlord for that purpose or inside of the Premises where approved by Landlord. Except as provided in Section 2.2, no materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored upon or permitted to remain outside the Premises unless otherwise approved by Landlord in its sole discretion. No loudspeaker or other device, system or apparatus which can be heard outside the Premises

shall be used in or at the Premises without the prior written consent of Landlord. No explosives or firearms shall be brought into the Premises.

6.3. Governmental Authorities. Except as permitted under other provisions of this Lease, or in response to an emergency, Tenant shall not initiate any communications regarding the Premises or Tenant's use thereof, whether written or oral, with any governmental authorities without Landlord's prior written consent, which consent Landlord shall not unreasonably withhold, condition or delay. Landlord shall have the right to approve any written communications from Tenant to a governmental authority relating to the Premises or Tenant's use thereof, and shall have the right to have a representative participate in any oral communications (whether in person or by telephone). Tenant shall give Landlord no less than forty-eight (48) hours prior written notice of any proposed telephone conferences or meetings with a governmental entity in order to allow Landlord's participation. Tenant shall promptly notify Landlord of any communications otherwise permitted under this Lease or in response to an emergency. Without limiting the foregoing, the parties agree that Tenant will coordinate any applications or other filings under the National Environmental Policy Act or the California Environmental Quality Act, and the provisions of this Section shall apply to all communications with governmental authorities regarding such applications and/or filings.

7. NET LEASE; ADDITIONAL RENT

7.1. Net Lease. The Rent due hereunder shall be absolutely net to Landlord and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Landlord shall not be expected or required under any circumstances or conditions whatsoever, whether now existing or hereafter arising, and whether now known or unknown to the parties, to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability hereunder, except if and solely to the extent expressly so provided in this Lease.

7.2. Real Property Taxes. Tenant shall pay, as Additional Rent under this Lease, to the relevant authority or entity, in lawful money of the United States, without offset or deduction, prior to delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of every name, nature or kind that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Premises or any part thereof; or upon the rent or income of Tenant; or upon the use or occupancy of the Premises; upon any of the buildings or improvements that are or are hereafter placed upon the Premises; or upon the leasehold of Tenant or upon the estate hereby created; or upon Landlord by reason of its ownership of the fee underlying this Lease (but not including any franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, in whole or in part, any other tax that would otherwise be the responsibility of Tenant). If at any time during the Term, under any Applicable Laws, any tax is levied or assessed against Landlord directly, in substitution in whole or in part for real property taxes, Tenant covenants and agrees to pay and discharge such tax. All of the foregoing taxes, assessments and other charges which are the responsibility of Tenant are herein referred to as ***"Real Property Taxes."*** Tenant shall obtain and deliver to Landlord, promptly upon request therefor, satisfactory evidence of payment of all Real Property Taxes. Any Real Property Taxes relating to a fiscal period of any taxing authority, only a part of which period is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay the portion thereof attributable to any period outside the Term, and Tenant shall pay the portion thereof attributable to any period within the Term.

7.3. Right to Contest Taxes. Tenant shall have the right to contest, by appropriate proceedings, the amount or validity, in whole or in part, of any Real Property Taxes;

provided that Tenant shall give Landlord prior written notice of any proposed contest, and the right to comment on any documentation Tenant proposes to submit to the County of Santa Clara. In the event the applicable taxing authority having jurisdiction over the contest proceedings allows the posting of security or some other method of deferring payment of the disputed Real Property Taxes, Tenant may do so; otherwise Tenant shall not postpone or defer payment of any disputed Real Property Taxes but shall pay such Real Property Taxes in accordance with Section 7.2 notwithstanding such contest. Landlord shall have no obligation to join in any such proceedings. Tenant shall indemnify and defend Landlord against and hold Landlord harmless from and against any and all claims, demands, losses, costs, liabilities, damages, penalties and expenses, including, without limitation, reasonable attorneys' fees and expenses, arising from or in connection with any such proceedings. The provisions of this Section shall in no way limit or supersede Landlord's right to contest Real Property Taxes applicable to the Premises, and Tenant shall reasonably cooperate with any contest by Landlord.

7.4. Insurance Costs. Tenant shall reimburse Landlord for all premiums and costs for insurance carried by Landlord on the Premises or in connection with the use or occupancy thereof (including all amounts paid as a result of loss sustained that would be covered by such policies but for deductibles or self-insurance retentions), including, but not limited to, the premiums and costs of fire and extended coverage, earthquake, flood, vandalism and malicious mischief, commercial liability and property damage, worker's compensation insurance, rental income insurance and any other insurance commonly carried by prudent owners of comparable buildings (collectively, "***Insurance Costs***"); provided, however, that Landlord may, but shall not be obligated to carry earthquake insurance on the Premises. Commencing on the Commencement Date, Tenant shall pay to Landlord as Additional Rent one twelfth (1/12) of the Insurance Costs for each calendar year or portion thereof during the Term, in advance, on or before the first day of each month in an amount estimated by Landlord as stated in a written notice to Tenant. Landlord may by written notice to Tenant revise such estimates from time to time and Tenant shall thereafter make payments on the basis of such revised estimates. With reasonable promptness after the expiration of each calendar year, Landlord will furnish Tenant with a statement setting forth in reasonable detail the actual Insurance Costs for the prior calendar year. If the actual Insurance Costs for such year exceed the estimated Insurance Costs paid by Tenant for such year, Tenant shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Insurance Costs paid by Tenant and the actual Insurance Costs within fifteen (15) days after the receipt of Landlord's statement of Insurance Costs. If the total amount paid by Tenant for any year exceeds the actual Insurance Costs for that year, the excess shall be credited against the next installments of Base Rent due from Tenant to Landlord, or, if after the Termination Date, the excess shall first be credited against any unpaid Base Rent or Additional Rent due and any remaining excess shall be refunded to Tenant concurrently with the furnishing of Landlord's statement of Insurance Costs. If either the Commencement Date or the Termination Date occurs on a date other than the first or last day, respectively, of a calendar year, Insurance Costs for the year in which the Commencement Date or Termination Date occurs shall be prorated based on a 365-day year.

7.5. Utilities. Tenant shall be solely responsible for and shall make all arrangements for all utilities and services furnished to or used at the Premises, including, without limitation, all water, gas, electricity, telephone, telecommunications and other electronic communication services or systems, landscaping, sewer service, waste pick-up, janitorial and any other materials, utilities and services.

7.6. Taxes on Tenant's Property and Business. Tenant shall pay prior to delinquency all taxes levied or assessed by any local, state or federal authority upon the conduct of Tenant's business in the Premises or upon Tenant's Property (as defined in Section 9.7) and shall deliver satisfactory evidence of such payment to Landlord. If the assessed value

of the Premises is increased by the inclusion of a value placed upon Tenant's Property, Tenant shall pay the taxes so levied.

7.7. Transit Fees. Tenant shall pay as Additional Rent under this Lease its proportionate share of the cost of any transit services or traffic mitigation programs that Landlord implements in the Stanford Research Park, including without limitation charges for service and surcharges imposed directly or indirectly on the Premises by any governmental agencies on or with respect to transit (including transit services which may be provided in the future to occupants of the Stanford Research Park) or automobile usage or parking facilities (collectively, ***"Transit Fees"***). The share of Transit Fees allocated to the Premises shall be assessed pro rata and on a non-discriminatory basis, based on a reasonable standard applied in a non-discriminatory manner by Landlord (for example, based on the rentable area of the Buildings as compared to the total rentable area of the Stanford Research Park (or the area being served by the service, if less than the entire Stanford Research Park), or based on the average employee headcount in the Buildings as compared to the overall employee density of the Stanford Research Park). Notwithstanding the foregoing, (a) no Transit Fees shall be due or payable during the first twenty-four (24) months of the Term, and (b) in no event shall Tenant's share of Transit Fees exceed ten cents ($.10) per square foot of Rentable Area in the Premises per calendar year, not to exceed Thirty-Five Thousand Dollars ($35,000) per calendar year. Transit Fees shall be paid by Tenant in the manner described above for the payment of Insurance Costs.

8. REPAIRS, MAINTENANCE AND SERVICES

8.1. Landlord's Obligations. Except as expressly provided in this Lease, Landlord shall not be required to maintain or repair the Premises or furnish any services, facilities or utilities to the Premises or to Tenant. Notwithstanding the foregoing, Landlord hereby warrants that the cooling tower, boiler, chiller and air handlers of the heating, ventilating and air conditioning system serving the following portions of the Premises: Building 25 Ground Level, Building 26 Basement Level, Building 26 Ground Level and Building 26 Upper Level (collectively, the ***"Main HVAC System Components"***) are in good operating condition. Landlord's warranty shall continue for a period of twelve (12) months after the Commencement Date (the ***"Warranty Period"***). In the event a Main HVAC System Component is in need of repair or replacement and Tenant notifies Landlord in writing of such need during the Warranty Period, Landlord shall repair or replace such Main HVAC System Component at Landlord's sole cost and expense; provided that such warranty shall not cover any repair that is attributable to misuse by Tenant or Tenant's Agents or Tenant's failure to comply with its maintenance obligations as set forth in Section 8.2 below.

8.2. Tenant's Obligations. Except as otherwise expressly provided in Section 8.1, Tenant assumes full responsibility for the condition, repair, replacement and maintenance of the Premises, including, without limitation, the exterior of the Premises, the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, stairwells and elevators (collectively, the ***"Building Structure"***), and all air conditioning, electricity, steam, water, heating, ventilating, mechanical, lighting, escalator and elevator systems, sanitary and storm drainage systems and all other utilities and mechanical systems (the ***"Building Systems"***). Tenant shall repair, replace and maintain the Premises (including the Building Structure and Building Systems) in good working order and in a clean, safe and sanitary condition. Tenant shall perform all such work and activities diligently and expeditiously to completion and in a manner consistent with comparable buildings located in the Stanford Research Park in Palo Alto. Without limiting the generality of the foregoing, Tenant shall implement and execute an on-going preventative maintenance program covering the heating, ventilating and air conditioning systems servicing the Premises, including the Main HVAC System Components that is consistent with best industry practices. All repairs and replacements by Tenant for which Tenant is responsible are collectively referred

to as the ***"Tenant Obligations"*** and shall be made and performed: (a) at Tenant's cost and expense, (b) by licensed and reputable contractors or mechanics approved by Landlord, (c) so that same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operation of or damage the Building Systems, and (e) in accordance with Article 9 (if applicable), and all Applicable Laws. Tenant shall reimburse Landlord within ten (10) days after written demand as Additional Rent for any out-of-pocket expenses incurred by Landlord in connection with any repairs or replacements required to be made by Tenant, including, without limitation, any reasonable fees charged by Landlord's contractors to review plans and specifications prepared by Tenant.

8.3. Security. Tenant shall be solely responsible for the security of the Premises and Tenant and Tenant's Agents while in or about the Premises. Landlord shall not be obligated to provide any security services to the Premises. Any security services provided to the Premises by Landlord shall be at Landlord's sole discretion and Landlord shall not be liable to Tenant or Tenant's Agents for any failure to provide security services or any loss, injury or damage suffered as a result of a failure to provide security services.

8.4. Landlord's Right To Perform. In the event Tenant fails to perform or adequately perform any of Tenant's Obligations as reasonably determined by Landlord, and upon fifteen (15) days written notice to Tenant, may terminate Tenant's right to perform Tenant's Obligations. In the event Landlord exercises such right, Landlord shall then assume for itself or assign to Landlord's property manager all responsibility for the performance of all such Tenant's Obligations for the remainder of the Term, and Tenant shall reimburse Landlord, as Additional Rent, for (a) the cost of performing all such Tenant's Obligations, and (b) a commercially reasonable property management fee, within twenty (20) days after receipt of an invoice from Landlord.

9. INITIAL IMPROVEMENT WORK; ALTERATIONS

9.1. Landlord's Work. Prior to delivery of possession of the Premises, Landlord shall, at its sole cost and expense, (a) complete the work described in the attached **Exhibit C** (***"Landlord's Environmental Work"***), and (b) install a new minimum 650-ton cooling tower in the Premises (with Landlord's Environmental Work, collectively, ***"Landlord's Work"***). Notwithstanding the terms hereof and of **Exhibit C**, the actual scope of Landlord's Environmental Work may be modified by Landlord as reasonably necessary to address the actual environmental condition of the Premises, but shall not be materially reduced below the scope of work set forth in **Exhibit C**. Landlord will provide to Tenant upon completion of Landlord's Environmental Work a report describing the actual scope and extent of Landlord's Environmental Work (including soil vapor testing), which report will be deemed to modify the definition of Landlord's Environmental Work for all purposes under this Lease. Without limiting the foregoing, Tenant agrees and acknowledges that after completion of Landlord's Environmental Work, certain Hazardous Materials may remain in the Buildings, as more particularly described in the attached **Schedule 9.1** (collectively, the ***"Remaining Materials"***). Landlord will deliver to Tenant a final report from Landlord's environmental consultant documenting the completion of Landlord's Environmental Work. Except for Landlord's Work and Landlord's obligations under Section 8.1, the Premises as furnished by Landlord will consist of the improvements and fixtures as they exist in the Premises on and as of the Commencement Date, and Landlord shall have no obligation for construction work or for making or installing any improvements, fixtures or equipment on, to or within the Premises.

9.2. Tenant Improvement Work. Other than Landlord's Work, Tenant shall be responsible for performing any work required to prepare the Premises for Tenant's intended purpose (the ***"Tenant Improvement Work"***). Within thirty (30) days after the execution of this Lease, Tenant shall submit to Landlord, for review and approval, detailed plans

for the Tenant Improvement Work. All Tenant Improvement Work shall be constructed at Tenant's sole cost and expense, in a good and workmanlike manner and in compliance with all Applicable Laws. Without limiting any other provision of this Lease, all of the provisions of this Article 9 and of Article 10 (Liens) shall apply to the Tenant Improvement Work. Tenant acknowledges that Landlord's Work will not be completed as of the Commencement Date. Landlord and Landlord's Agents shall not unreasonably interfere with the Tenant Improvement Work. Tenant and Tenant's Agents shall cooperate with and provide reasonable access to Landlord and Landlord's Agents to the Premises for the completion of Landlord's Work, and shall not unreasonably interfere with the completion of Landlord's Work.

9.3. Alterations by Tenant. Tenant shall not make or permit any alterations to the Building Systems, and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, ***"Alterations"***) in or to the Premises, including the Tenant Improvement Work, without Landlord's prior written consent, which Landlord shall not unreasonably withhold, condition or delay. Landlord shall respond to any request by Tenant to make any Alteration within ten (10) Days after receipt of such request for consent from Tenant, which request shall include submission of detailed plans and specifications for the Alterations and all other information reasonably required by Landlord to act on the request per the standards and requirements set forth in this Article 9. Notwithstanding the foregoing, Landlord's consent shall not be required (a) in the case of interior, cosmetic non-structural Alterations that do not require a permit, affect the Building Systems, or affect the exterior appearance of any Building; or (b) in the case of other Alterations that do not exceed a total price of One Hundred Fifty Thousand Dollars ($150,000) per project and do not affect the Building Systems or the structural integrity of any Building. All Alterations shall be done at Tenant's sole cost and expense, including without limitation the cost and expense of obtaining all permits and approvals required for any Alterations.

9.4. Project Requirements. The following provisions of this Section 9.4 shall apply to the Tenant Improvement Work and all Alterations, whether or not requiring Landlord's approval (unless otherwise noted):

(a) Prior to entering into a contract for any Tenant Improvement Work or Alterations requiring Landlord's approval, Tenant shall obtain Landlord's written approval, which approval shall not be unreasonably withheld, conditioned or delayed, of the identity of each of the design architect and the general contractor.

(b) Before commencing the construction of any Tenant Improvement Work or Alterations, Tenant shall procure or cause its general contractor to procure the insurance coverage described below and provide Landlord with certificates of such insurance in form reasonably satisfactory to Landlord. All such insurance shall comply with the following requirements of this Section and of Section 13.2.

(i) During the course of construction, to the extent not covered by property insurance maintained by Tenant pursuant to Section 13.2, comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, excluding earthquake and flood, covering all improvements in place on the Premises, all materials and equipment stored at the site and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Tenant or its construction manager, contractors or subcontractors (excluding any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement cost of the Alterations.

(ii) Commercial general liability insurance covering Tenant, Landlord and each construction manager, contractor and subcontractor engaged in any work on the Premises, which insurance may be effected by endorsement, if obtainable, on the policy required to be carried pursuant to Section 13.2, including insurance for completed operations, elevators, owner's, construction manager's and contractor's protective liability, products completed operations for one (1) year after the date of acceptance of the work by Tenant, broad form blanket contractual liability, broad form property damage and full form personal injury (including but not limited to bodily injury), covering the performance of all work at or from the Premises by Tenant, its construction manager, contractors and subcontractors, and in a liability amount not less than the amount at the time carried by prudent owners of comparable construction projects, but in any event not less than the following amounts of combined single limit coverage: One Million Dollars ($1,000,000) for projects with an estimated cost of $150,000 or less, Three Million Dollars ($3,000,000) for projects with an estimated cost above $150,000 and up to $500,000, and Five Million Dollars ($5,000,000) for projects with an estimated cost in excess of $500,000. Such policy shall include thereunder for the mutual benefit of Landlord and Tenant, bodily injury liability and property damage liability, and automobile insurance on any non-owned, hired or leased automotive equipment used in the construction of any work.

(iii) Workers' Compensation Insurance approved by the State of California, in the amounts and coverages required under workers' compensation, disability and similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with limits not less than One Million Dollars ($1,000,000) or such higher amounts as may be required by law.

(c) All construction and other work shall be done at Tenant's sole cost and expense and in a good and workmanlike manner. Tenant shall cause all work to be performed in accordance with all Applicable Laws, and with plans and specifications that are in accordance with the provisions of this Article 9 and all other provisions of this Lease.

(d) Prior to the commencement of any Alteration in excess of Twenty-Five Thousand Dollars ($25,000), Landlord shall have the right to post in a conspicuous location on the Premises and to record in the public records a notice of Landlord's nonresponsibility. Tenant covenants and agrees to give Landlord at least ten (10) days prior written notice of the commencement of any such Alteration in order that Landlord shall have sufficient time to post such notice.

(e) Tenant shall reimburse Landlord within ten (10) days after written demand as Additional Rent for any out-of-pocket expenses incurred by Landlord in connection with the Alterations (not including any Tenant Improvement Work) and/or any repairs or replacements required to be made by Tenant, including, without limitation, any reasonable fees charged by Landlord's contractors and/or consultants to review plans and specifications or working drawings prepared by Tenant. Tenant acknowledges and agrees that Landlord and Landlord's contractors and consultants, in reviewing Tenant's plans and specifications or working drawings, in granting approval for them, and in approving any work done by Tenant, owe no duty and assume no responsibility to Tenant for the design or construction of the Tenant Improvement Work or Alterations, it being expressly understood and agreed that Landlord, its contractors and consultants may, in their sole discretion, limit the scope of its review to only such matters as may appear appropriate or necessary in the interests of Landlord.

(f) Tenant shall take all necessary safety precautions during any construction.

(g) Within sixty (60) days after the Tenant Improvement Work with respect to the Premises has been substantially completed, Tenant shall, at its cost, deliver

copies of annotated plans and specifications to Landlord in hard copy and Adobe Acrobat and AutoCAD formats.

(h) Upon completion of the construction of the Tenant Improvement Work and any Alterations in excess of Twenty-Five Thousand Dollars ($25,000) during the Term, Tenant shall file for recordation, or cause to be filed for recordation, a notice of completion and shall deliver to Landlord evidence satisfactory to Landlord of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for liens that are contested in the manner provided herein).

9.5. Communications and Computer Lines. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables serving the Premises, provided that (a) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and otherwise comply with all provisions of this Article 9 in connection with the work.

9.6. Ownership of Improvements. Except as provided in Section 9.7, all Tenant Improvement Work, Alterations, and any other appurtenances, fixtures, improvements, equipment, additions and property permanently attached to or installed in the Premises at the commencement of or during the Term, shall at the end of the Term become Landlord's property without compensation to Tenant, or be removed in accordance with this Section. Upon written request by Tenant, Landlord shall notify Tenant in writing at the time of Landlord's approval of the Tenant Improvement Work or Alterations, as applicable, whether or not the proposed Tenant Improvement Work and/or Alterations will be required to be removed by Tenant at the end of the Term; provided that Landlord shall not require removal unless Tenant's failure to remove such Tenant Improvement Work or Alterations will, in Landlord's reasonable opinion, cause Landlord to incur additional demolition costs beyond those that would otherwise be incurred by Landlord in the ordinary course of demolition. If Tenant does not request an advance determination by Landlord, Landlord shall notify Tenant in writing prior to the Termination Date whether or not Tenant will be required to remove the Tenant Improvement Work or Tenant Alterations installed by Tenant at the end of the Term, using the same criteria as described in the previous sentence. If Landlord fails to so notify Tenant, Tenant shall not be required to remove any Tenant Improvement Work and Alterations. Tenant shall repair or pay the cost of repairing any damage to the Premises caused by the removal of Tenant Improvement Work or Alterations. If Tenant fails to perform its repair or removal obligations, without limiting any other right or remedy, Landlord may on five (5) Business Days prior written notice to Tenant perform such obligations at Tenant's expense without liability to Tenant for any loss or damage, and Tenant shall reimburse Landlord within twenty (20) days after demand for all out-of-pocket costs and expenses incurred by Landlord in connection with such repair or removal. Tenant's obligations under this Section shall survive the termination of this Lease.

9.7. Tenant's Personal Property. All furniture, trade fixtures, furnishings, equipment and articles of movable personal property installed in the Premises by or for the account of Tenant (except for ceiling and related fixtures, HVAC equipment and floor coverings, which shall become the property of Landlord at the end of the Term), and which can be removed without structural or other material damage to the Premises (collectively, ***"Tenant's Property"***) shall be and remain the property of Tenant and may be removed by it at any time during the Term. Tenant shall remove from the Premises all Tenant's Property on or before the Termination Date, except such items as the parties have agreed pursuant to the provisions of this Lease or by separate agreement are to remain and to become the property of Landlord. Tenant shall repair or pay the cost of repairing any damage to the Premises resulting from such removal, and the provisions of Section 9.6 above shall apply in the event Tenant fails to do so. Any items of Tenant's Property which remain in the Premises after the Termination Date may, on five (5) Business Days prior written notice to Tenant, at the option of Landlord, be deemed

abandoned and in such case may either be retained by Landlord as its property or be disposed of, without accountability, at Tenant's expense in such manner as Landlord may see fit.

10. LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. If Tenant shall not, within twenty (20) days after notice of the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided in this Lease and by law, the right but not the obligation to cause any such lien to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable counsel fees) shall be payable to Landlord by Tenant upon demand with interest from the date incurred at the Interest Rate. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Applicable Laws or that Landlord shall deem proper for the protection of Landlord, the Premises from mechanics' and materialmen's liens, as more specifically provided in Section 9.4(d).

11. COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS

11.1. Applicable Laws. Tenant, at Tenant's cost and expense, shall comply with all applicable laws, statutes, codes, ordinances, orders, rules, regulations, entitlements, and requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof, and all administrative or judicial orders or decrees and all permits, licenses, approvals and other entitlements issued by governmental entities, and rules of common law, whether now existing or hereafter enacted (collectively, ***"Applicable Laws"***), relating to or affecting the Premises or the use, alteration, operation or occupancy of the Premises. Without limiting the foregoing, Tenant shall be solely responsible for compliance with and shall make or cause to be made all such improvements and alterations to and within the Premises (including, without limitation, removing barriers and providing alternative services) as shall be required to comply with all Applicable Laws relating to public accommodations, including the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12111 et seq. (the ***"ADA"***), and the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a et. seq., the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. §§ 790 et. seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, the Uniform Federal Accessibility Standards, and Title 24 of the California Code of Regulations, as the same may be amended from time to time, or any similar or successor laws, ordinances and regulations, now or hereafter adopted. Tenant's liability shall be primary and Tenant shall indemnify Landlord in accordance with Section 13.1 in the event of any failure or alleged failure of Tenant to comply with Applicable Laws. Any work or installations made or performed by or on behalf of Tenant or any person or entity claiming through or under Tenant pursuant to the provisions of this Section shall be made in conformity with and subject to the provisions of Article 9. Tenant shall deliver to Landlord within five (5) days of receipt, a copy of any notice from any governmental authority relating to any violation or alleged violation of any Applicable Law pertaining to the Premises or activities in, on or about the Premises.

11.2. Insurance Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would: (a) invalidate or be in conflict with the provisions of or cause any increase in the applicable rates for any fire or other insurance policies covering the Premises or any property located therein (unless Tenant pays for such increased costs), or (b) result in a refusal by fire insurance companies of good standing to insure the Premises or any such property in amounts reasonably satisfactory to Landlord (which

amounts shall be comparable to the amounts required by comparable landlords of comparable buildings, or (c) subject Landlord to any liability or responsibility for injury to any person or property by reason of any business operation being conducted in the Premises. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.

12. HAZARDOUS MATERIALS

12.1. Definitions. As used in this Lease, the following terms shall have the following meanings:

(a) ***"Environmental Activity"*** means any use, treatment, keeping, storage, holding, release, emission, discharge, manufacturing, generation, processing, abatement, removal, disposition, handling, transportation, deposit, leaking, spilling, injecting, dumping or disposing of any Hazardous Materials from, into, on or under the Premises, and shall include the Exacerbation of the Pre-Existing Condition by Tenant or any of Tenant's Agents.

(b) ***"Environmental Laws"*** mean all Applicable Laws, now or hereafter in effect, relating to environmental conditions, industrial hygiene, Environmental Activity or Hazardous Materials on, under or about the Premises, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Solid Waste Disposal Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar federal, state and local laws and ordinances and the regulations now or hereafter adopted and published and/or promulgated pursuant thereto.

(c) ***"Exacerbation"*** means any direct, material adverse impact on a Pre-Existing Condition. Exacerbation includes, without limitation, actions which speed, redirect or enhance the migration of groundwater contamination that is an element of the Pre-Existing Condition in a fashion that causes a material adverse impact (for example, by causing Hazardous Materials to migrate to deeper aquifers), and actions which cause damage to or limit the effectiveness of any existing remediation systems or equipment.

(d) ***"Hazardous Material"*** means any chemical, substance, medical or other waste, living organism or combination thereof which is or may be hazardous to the environment or human or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects. Hazardous Materials shall include, without limitation, petroleum hydrocarbons, including MTBE, crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane, lead, urea, formaldehyde foam insulation, microbial matter (including mold, fungus or spores) and all substances which now or in the future may be defined as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous materials," "toxic substances," "infectious wastes," "biohazardous wastes," "medical wastes," "radioactive wastes" or which are otherwise listed, defined or regulated in any manner pursuant to any Environmental Laws.

(e) ***"Tenant's Hazardous Materials"*** means any Hazardous Materials resulting from, or used in connection with, any Environmental Activity by Tenant or any of Tenant's Agents.

12.2. Environmental Releases.

(a) Landlord hereby informs Tenant that detectable amounts of Hazardous Materials have come to be located on, beneath and/or in the vicinity of the Premises, as more particularly described on the attached **Schedule 12.2(a)** (and together with the Remaining Materials, the ***"Pre-Existing Condition"***). Landlord has made available to Tenant all material documentation in Landlord's possession regarding the Pre-Existing Condition. Tenant has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of the Pre-Existing Condition on its operations and persons using the Premises. Landlord makes no representation or warranty with regard to the environmental condition of the Premises. Except for Landlord's obligation to perform Landlord's Environmental Work and Landlord's obligations under Section 12.5(b), Tenant hereby releases Landlord and Landlord's officers, directors, trustees, agents and employees from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Tenant or any of Tenant's Agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto the Premises, including without limitation the Pre-Existing Condition. In connection with such release, Tenant hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(b) Except to the extent of Tenant's indemnity as set forth in Section 12.5(a), Tenant's obligations under this Article 12, or any Exacerbation by Tenant or Tenant's Agents of the Pre-Existing Condition, Landlord hereby releases Tenant from any and all claims, demands, debts, liabilities and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Landlord or any of Landlord's Agents may have, claim to have or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under the Premises, including without limitation the Pre-Existing Condition. In connection with such release, Landlord hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Landlord agrees that Tenant may request a "comfort" letter from the RWQCB confirming that the RWQCB will not hold Tenant liable for the Pre-Existing Condition; provided that Tenant's inability to obtain such a letter shall not result in any liability of Landlord to Tenant, or have any effect on the terms, conditions or enforceability of this Lease.

12.3. Use of Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, treated, stored, transported, handled, discharged, released or disposed of in, on, from, under or about the Premises except in strict compliance with all Applicable Laws, including all Environmental Laws, and then only to the extent reasonably necessary for Tenant's permitted use of the Premises and in compliance with the provisions of this Article 12. Tenant shall not cause or permit any Hazardous Materials to be used, stored, discharged, released or disposed of in, on, from, under or about any other land or improvements

in the vicinity of the Premises. As of the Commencement Date, Tenant has provided and Landlord has approved Tenant's Hazardous Materials business plan filed with the City of Palo Alto Fire Department, a copy of which is attached as **Exhibit D** (the ***"Approved Plan"***). In no event shall Tenant bring onto the Premises any Hazardous Materials other than those listed on the Approved Plan. In the event Tenant desires to update or amend the Approved Plan, or to bring additional Hazardous Materials onto the Premises, Tenant shall obtain Landlord's prior written consent, which Landlord may withhold in its sole discretion. Landlord shall respond to Tenant's request for such consent within three (3) Business Days after receipt of such request. Without limiting the foregoing, (a) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use of Hazardous Materials at the Premises, including, without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Premises; and (b) Tenant shall not be permitted to install any underground piping for delivery of any Hazardous Materials or other liquid or gaseous substances; it being the understanding of the parties that any such piping must be approved in writing by Landlord and must be installed above ground. Tenant shall in all respects handle, treat, deal with and manage any and all Tenant's Hazardous Materials in strict conformity with all Environmental Laws and prudent industry practices regarding management of such Hazardous Materials.

12.4. Remediation of Hazardous Materials. Tenant shall, upon demand of Landlord, and at Tenant's sole cost and expense, promptly take all actions to remediate the Premises from the effects of any Tenant's Environmental Activity. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises (other than the Pre-Existing Condition), the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work with respect to Tenant's Environmental Activity, whether on or off of the Premises. Subject to the effects of the Pre-Existing Condition, Tenant shall take all actions necessary to remediate the Premises from the effects of such Tenant's Environmental Activity to a condition allowing unrestricted use of the Premises (i.e. to a level that will allow any future use of the Premises, including residential, hospital, or day care, without any engineering controls or deed restrictions), notwithstanding any lesser standard of remediation allowable under Applicable Laws. The foregoing sentence shall not be deemed to require that Tenant undertake any remediation of the Pre-Existing Condition; provided, however, that the existence of any restrictions on the use of the Premises due to the Pre-Existing Condition shall not excuse Tenant from its obligations under this Section with respect to Tenant's Environmental Activity.[1] All work shall be performed by one or more contractors selected by Tenant and reasonably approved in advance and in writing by Landlord. Tenant shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all Applicable Laws. Any such actions shall be performed in a good, safe and workmanlike manner. Tenant shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Tenant shall promptly provide to Landlord copies of testing results and reports that are generated in connection with the above activities and any that are submitted to any governmental entity. Promptly upon completion of

[1] Tenant shall only be required to remediate any contamination resulting from Tenant's Hazardous Materials, and the standard of such remediation will be unrestricted use as defined in Section 12.4. By way of example, if Tenant 's lithium-ion cells catch fire and leak into the soil, Tenant is responsible for remediation activity to an unrestricted use standard. Tenant is not responsible for remediation of the Pre-Existing Condition, unless Tenant exacerbates the Pre-Existing Condition. If Tenant does not exacerbate the Pre-Existing Condition, Tenant has no restoration responsibilities with respect to the Pre-Existing Condition pursuant to the release set forth in Section 12.2(b) ("Environmental Release").

such investigation and remediation, Tenant shall permanently seal or cap all monitoring wells and test holes in accordance with sound engineering practice and in compliance with Applicable Laws, remove all associated equipment, and restore the Premises to the physical condition existing on the Commencement Date, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation.

12.5. Indemnity; Reimbursement.

(a) Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord and Landlord's trustees, directors, officers, agents, contractors and employees and their respective successors and assigns (collectively, ***"Landlord's Agents"***), free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including reasonable attorneys' and consultants' fees and oversight and response costs) to the extent arising from (a) Environmental Activity by Tenant or Tenant's Agents; (b) failure of Tenant or Tenant's Agents to comply with any Environmental Law with respect to Tenant's Environmental Activity; or (c) Tenant's failure to remove Tenant's Hazardous Materials as required in Section 12.4. Tenant's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Landlord), even if such claims, suits or proceedings are groundless, false or fraudulent; conducting all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Landlord or the Premises related thereto. Prior to retaining counsel to defend such claims, suits or proceedings, Tenant shall obtain Landlord's written approval of the identity of such counsel, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the presence of Tenant's Hazardous Materials at the Premises upon surrender of the Premises at the expiration or earlier termination of this Lease prevents Landlord from reletting the Premises, or reduces the fair market and/or rental value of the Premises or any portion thereof, Tenant's indemnity obligations shall include all losses to Landlord directly arising therefrom.

(b) In the event that Tenant is named in any enforcement action or litigation regarding the Pre-Existing Condition which is brought by a governmental entity with jurisdiction over the remediation of the Pre-Existing Condition (collectively, an ***"Action"***), Tenant will tender the defense of the Action to Landlord (whether or not Landlord is also named in the Action), and Landlord will seek Tenant's dismissal from the Action at Landlord's sole cost and expense.

(i) If the Action also involves alleged Exacerbation of the Pre-Existing Condition by Tenant, or contamination of the Premises by Tenant's Hazardous Materials or Environmental Activity (collectively, ***"Claims Against Tenant"***), Landlord shall have no responsibility for dismissal of such claims, which Tenant shall defend at its sole cost and expense, and which shall be subject to Tenant's indemnity set forth in Section 12.5(a).

(ii) If Landlord is not able to obtain Tenant's dismissal from the Action, Landlord will control the defense of Tenant in the Action with respect to Tenant's liability for the Pre-Existing Condition (including without limitation settlement of the Action in Landlord's sole discretion), but not for any Claims Against Tenant. If the Action includes Claims Against Tenant, Landlord and Tenant will mutually agree upon the process for jointly defending the Action in a manner that will give each party control over that portion of the Action for which it is responsible.

(iii) Landlord shall be responsible at its sole cost and expense for the costs of defense of Tenant as described in this Section, and shall reimburse Tenant for any documented out-of-pocket costs reasonably incurred by Tenant and arising out of the Action (including any fines, penalties, and remediation costs), except to the extent such costs

relate to Claims Against Tenant. Landlord shall have no liability to the extent any costs incurred by Tenant relate to Claims Against Tenant, and the provisions of this Section shall not modify or amend Tenant's indemnity of Landlord as set forth in Section 12.5(a). Landlord shall have no liability to Tenant for defense costs, legal fees, remediation costs, or any other cost or expense related to the Action if Tenant fails to tender defense of the Action to Landlord.

12.6. No Lien. Tenant shall not suffer any lien to be recorded against the Premises as a consequence of any Tenant's Hazardous Materials, including any so-called state, federal or local "super fund" lien related to the remediation of any Tenant's Hazardous Materials in or about the Premises.

12.7. Investigation. In the event Landlord reasonably believes that there has been a release of Tenant's Hazardous Materials at the Premises, Landlord shall have the right to enter and conduct an inspection of the Premises, including invasive tests, at any reasonable time and upon reasonable advance notice, to determine whether Tenant is complying with the terms of this Lease, including but not limited to the compliance of the Premises and the activities thereon with Environmental Laws with respect to Tenant's Environmental Activity (the ***"Environmental Investigation"***). Landlord shall have the right, but not the obligation, to retain at its expense an independent professional consultant to enter the Premises to conduct such an inspection, and to review any report prepared by or for Tenant concerning such compliance. In the event the Environmental Investigation identifies any deficiencies in the compliance of the Premises with Environmental Laws due to any Environmental Activity by Tenant or Tenant's Agents, Tenant shall promptly correct any such deficiencies identified in the Environmental Investigation, and document to Landlord that corrective action has been taken. In such event, Tenant shall also reimburse Landlord for the reasonable cost of the Environmental Investigation. If the Environmental Investigation identifies any such deficiency in compliance of the Premises with Environmental Laws due to any Environmental Activity by Tenant or Tenant's Agents, then, within nine (9) months of the date of the Environmental Investigation, Landlord may request a detailed review of the status of such violation by a consultant selected by Landlord (the ***"Supplemental Investigation"***). Tenant shall pay for the reasonable cost of any Supplemental Investigation. A copy of the Supplemental Investigation shall be promptly supplied to Landlord and Tenant when it becomes available.

12.8. Right to Remediate. Should Tenant fail to perform or observe any of its obligations or agreements pertaining to Hazardous Materials or Environmental Laws after notice from Landlord and a reasonable time to cure given to Tenant, then Landlord shall have the right, but not the obligation, without limitation of any other rights of Landlord hereunder, to enter the Premises personally or through Landlord's Agents and perform the same. Tenant agrees to indemnify Landlord for the costs thereof and liabilities therefrom as set forth above in this Article 12.

12.9. Notices. Tenant shall promptly notify Landlord of any inquiry, test, claim, investigation or enforcement proceeding by or against Tenant or the Premises known to Tenant concerning any of Tenant's Hazardous Materials or Tenant's Environmental Activity. Landlord shall promptly notify Tenant of any inquiry, test, claim, investigation, or enforcement proceeding by or against Landlord or the Premises known to Landlord concerning the Pre-Existing Condition. Tenant shall promptly notify Landlord of any release or discharge of Hazardous Materials on, in under or about the Premises due to Tenant's Environmental Activity. Tenant acknowledges that Landlord, as the owner of the Premises, shall have the sole right at its election and at Tenant's expense, to negotiate, defend, approve and appeal any action taken or order issued by any applicable governmental authority with respect to any remediation of the Premises pursuant to Section 12.4 due to Tenant's Environmental Activity.

12.10. Surrender. Tenant shall surrender the Premises to Landlord, upon the expiration or earlier termination of the Lease, with Tenant's Hazardous Materials removed from the Premises in accordance with the provisions of this Article 12.

12.11. Survival; Insurance. The provisions of this Article 12 shall survive the expiration or earlier termination of this Lease. The provisions of Article 13 (Insurance) shall not limit in any way Tenant's obligations under this Article 12.

13. INDEMNITY; INSURANCE

13.1. Indemnity. This indemnity shall not apply to Hazardous Materials, which instead, is covered in Section 12.5(a) above. Tenant shall indemnify, protect, defend and save and hold Landlord and Landlord's Agents harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages) and expenses, including, without limitation, reasonable attorneys' fees and costs (including Landlord's in-house counsel), and reasonable investigation costs (collectively, ***"Losses"***), incurred in connection with or arising from: (a) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the Premises by Tenant and Tenant's Agents, (c) the condition of the Premises (other than the Pre-Existing Condition), and any occurrence on the Premises during the term of this Lease (including injury to or death of any person, or damage to property) from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or any third party not acting by or through Tenant, including but not limited to those third parties referenced in Article 12 above, and (d) any acts or omissions or negligence of Tenant or of Tenant's Agents, in, on or about the Premises. In case any action or proceeding be brought, made or initiated against Landlord relating to any matter covered by Tenant's indemnification obligations under this Section or under Section 12.5(a), Tenant, upon notice from Landlord, shall at its sole cost and expense, resist or defend such claim, action or proceeding by counsel approved by Landlord. Notwithstanding the foregoing, Landlord may retain its own counsel to defend or assist in defending any claim, action or proceeding involving potential liability in excess of Five Million Dollars ($5,000,000), and Tenant shall pay the reasonable fees and disbursements of such counsel unless such claim is reasonably within Tenant's liability policy limits as required under Section 13.2(a). Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

13.2. Insurance. Tenant shall procure at its sole cost and expense and keep in effect during the Term:

(a) commercial general liability insurance covering Tenant's operations in the Premises and the use and occupancy of the Premises and any part thereof by Tenant. Such insurance shall include broad form contractual liability insurance coverage insuring Tenant's obligations under this Lease. Such coverage shall be written on an "occurrence" form and shall have a minimum combined single limit of liability of not less than Five Million Dollars ($5,000,000.00). Tenant's policy shall be written to apply to all bodily injury, property damage, personal injury and other covered loss (however occasioned) occurring during the policy term, with at least the following endorsements to the extent such endorsements are generally available: (i) deleting any employee exclusion on personal injury coverage, (ii) including employees as additional insureds, (iii) providing broad form property damage coverage and products completed operations coverage (where applicable), and (iv) deleting any liquor liability exclusions. Such insurance shall name Landlord, Landlord's Agents and any other party designated by Landlord as an additional insured, shall specifically include the liability assumed hereunder by Tenant, shall provide that it is primary insurance, shall provide for severability of interests, shall further provide that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage

as to any insured, shall afford coverage for claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose in whole or in part during the policy period), and shall provide that Landlord will receive thirty (30) days' written notice from the insurer prior to any cancellation or material change of coverage or ten (10) days written notice for cancellation for failure to pay premiums;

(b) commercial property insurance, including sprinkler leakages, vandalism and malicious mischief and plate glass damage covering all the items specified as Tenant's Property and all other property of every description including stock-in-trade, furniture, fittings, installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of the Tenant in the Premises in an amount of not less than one hundred percent (100%) of the full replacement cost thereof as shall from time to time be determined by Tenant in form reasonably satisfactory to Landlord;

(c) Worker's Compensation Insurance in the amounts and coverages required under worker's compensation, disability and similar employee benefit laws applicable to Tenant and/or the Premises from time to time, and Employer's Liability Insurance, with limits of not less than One Million Dollars ($1,000,000) or such higher amounts as may be required by law;

(d) business income insurance with extra expense insurance in an amount sufficient to insure payment of Rent for a period of not less than twelve (12) months during any interruption of Tenant's business by reason of the Premises or Tenant's Property being damaged by casualty; and

(e) any other form or forms of insurance as Landlord may reasonably require from time to time in amounts and for insurable risks against a prudent tenant would protect itself to the extent landlords of comparable buildings in the vicinity of the Premises require their tenants to carry such other form(s) of insurance.

13.3. Policies. All policies of insurance required of Tenant shall be issued by insurance companies with general policyholders' rating of not less than A-, as rated in the most current available "Best's Insurance Reports," and not prohibited from doing business in the State of California, and shall, with the exception of Workers Compensation Insurance, include as additional insureds Landlord, Landlord's Agents, and such other persons or entities as Landlord specifies from time to time. Such policies, with the exception of Worker's Compensation Insurance and property insurance, shall be for the mutual and joint benefit and protection of Landlord, Tenant and others specified by Landlord. Executed copies of Tenant's policies of insurance or certificates thereof, including additional insureds endorsements, shall be delivered to Landlord within ten (10) days prior to the delivery of possession of the Premises to Tenant. Thereafter, Tenant shall provide evidence of renewal of its insurance prior to the expiration of the term of each policy, and executed copies of Tenant's renewal policies or certificates thereof within thirty (30) days after the expiration of the term of each such policy. All commercial general liability and property damage policies shall contain a provision that Landlord and any other additional insured, although named as additional insureds, shall nevertheless be entitled to recover under said policies for a covered loss occasioned by it, its servants, agents and employees, by reason of Tenant's negligence. As often as any policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance shall provide that the company writing said policy will give to Landlord thirty (30) days notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in the amounts of insurance, or ten (10) days written notice for failure to pay premiums All commercial general liability, property damage and other casualty policies shall be written on an occurrence basis. Landlord's coverage shall not be contributory. No policy shall have a deductible in excess of $25,000 for any one occurrence.

13.4. Landlord's Rights. Should Tenant fail to take out and keep in force each insurance policy required under this Article 13, or should such insurance not be approved by Landlord and should the Tenant not rectify the situation within two (2) Business Days after written notice from Landlord to Tenant, Landlord shall have the right, without assuming any obligation in connection therewith, to purchase such insurance at the sole cost of Tenant, and all costs incurred by Landlord shall be payable to Landlord by Tenant within twenty (20) days after demand as Additional Rent and without prejudice to any other rights and remedies of Landlord under this Lease.

13.5. Landlord's Insurance. Landlord will obtain and keep in force during the Term of this Lease a policy of all risk property insurance on the structural components of the Buildings (but not the Tenant Improvement Work, Tenant's Property or any Alterations). The amount of such insurance shall be Ten Million Dollars ($10,000,000), with a Twenty-Five Thousand Dollar ($25,000) deductible, subject to such modifications as are reasonably required due to insurance industry market conditions. Such policy shall be in the name of Landlord with loss payable to Landlord. Landlord's policy will insure against all risks of direct physical loss or damage subject to customary exclusions; may be endorsed to cover loss caused by such additional perils against which landlord may elect to insure, including earthquake and/or flood, and may provide coverage for loss of rents for a period of up to twelve (12) months.

13.6. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received (or which would have been received had the party carried the insurance required by this Lease) with respect to the loss, Landlord and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Premises or any portion thereof or the contents of the Premises or the Buildings for any loss or damage sustained by such other party with respect to the Premises or the Buildings, or any portion thereof, or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. Either party shall notify the other party if the policy of insurance carried by it does not permit the foregoing waiver.

13.7. No Liability. No approval by Landlord of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Landlord of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and Tenant assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

14. ASSIGNMENT, SUBLETTING AND FINANCING

14.1. No Right to Assign or Sublease. Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate (collectively, ***"Assignment"***), or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises (collectively, ***"Sublease"***) without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Article 14 to the contrary, but subject to the provisions of Section 14.7 below, Landlord's prior written consent shall not be required for any Assignment or Sublease to (a) any entity resulting from a merger or consolidation with Tenant (by asset acquisition or otherwise) or (b) an Affiliate of Tenant (collectively, a "***Permitted Transferee***"). As used in this Lease, the term "***Affiliate***" shall mean an individual, partnership, corporation, unincorporated association or other entity controlling, controlled by or under common control with Tenant and for the purposes of the foregoing, "control" shall mean ownership of fifty percent (50%) or more of the legal and beneficial interest

in such corporation or other entity coupled with the power to direct the management and affairs thereof.

14.2. Notice. If Tenant desires to enter into a Sublease of all or any portion of the Premises or Assignment of this Lease, it shall give written notice (the ***"Transfer Notice"***) to Landlord of its intention to do so, which notice shall contain (a) the name and address of the proposed assignee, subtenant or occupant (the ***"Transferee"***), (b) the nature of the proposed Transferee's business to be carried on in the Premises, (c) the terms and provisions of the proposed Assignment or Sublease, and (d) such financial information as Landlord may reasonably request concerning the proposed Transferee.

14.3. Terms of Approval. Landlord shall respond to Tenant's request for approval within fifteen (15) Business Days after receipt of the Transfer Notice. If Landlord approves the proposed Assignment or Sublease, Tenant may, not later than thirty (30) days thereafter, enter into the Assignment or Sublease with the proposed Transferee upon the terms and conditions set forth in the Transfer Notice and subject to any other conditions imposed by Landlord. Without limiting any other reasonable basis for denial of consent to an Assignment or Sublease, Tenant agrees that it shall be conclusively presumed to be reasonable for Landlord to consider the following requirements in determining whether or not to consent to a proposed Assignment or Sublease: (a) no Event of Default shall have occurred and remain uncured; (b) Tenant shall have complied with all provisions of this Article 14, (c) the use of the Premises by the Transferee shall comply with the provisions of this Lease and shall not materially increase the presence of Hazardous Materials arising from any Environmental Activity to be conducted by the Transferee at the Premises, and (d) the Transferee shall be capable financially of performing Tenant's obligations under this Lease and all other obligations relating to the Premises.

14.4. Excess Rent. For any Assignment or Sublease (including an Assignment or Sublease to a Permitted Transferee), fifty percent (50%) of the Excess Rent received by Tenant shall be paid to Landlord as and when received by Tenant. ***"Excess Rent"*** means the gross revenue received from the Transferee during the Sublease term or with respect to the Assignment, less (a) the gross revenue received by Landlord from Tenant during the period of the Sublease term (prorated based on the Rentable Area of the Sublease premises) or concurrently with or after the Assignment; (b) any reasonably documented tenant improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to or on behalf of the Transferee; (d) customary and reasonable external brokers' commissions to the extent paid and documented; (e) reasonable attorneys' fees; and (f) reasonable costs of advertising the space for Sublease or Assignment (collectively, ***"Transfer Costs"***). Tenant shall not be required to pay to Landlord any Excess Rent until Tenant has recovered its Transfer Costs.

14.5. Right of First Refusal. Except for an Assignment or Sublease to a Permitted Transferee, if Tenant desires to assign Tenant's interest in the Premises or to sublease the entire Premises for the remainder of the Term (collectively, a ***"Transfer"***), Tenant's Transfer Notice shall also include a written offer that includes all of the substantial business terms that Tenant has offered to a Transferee and shall offer to Transfer to Landlord, Tenant's interest in the portion of the Premises offered to the Transferee on such terms and conditions (the ***"Offer"***). Landlord shall have ten (10) days from Landlord's receipt of the Offer to accept the Offer by written notice to Tenant or to approve or disapprove the Transfer as provided in Section 14.3. If Landlord accepts the Offer, Landlord and Tenant shall consummate the Transfer within fifteen (15) days after Landlord's written notice of acceptance. The Transfer shall be consummated by Tenant's delivery to Landlord of a good and sufficient assignment of lease or sublease. If Landlord does not accept the Offer, but approves the Transfer, then in the event the terms of the Transfer are materially changed during subsequent negotiations to be more favorable to the Transferee, Tenant shall again deliver to Landlord an Offer in accordance

with this Section, offering the interest to Landlord on such more favorable terms. Landlord shall then have another period of ten (10) days after receipt of such Offer to accept such Offer.

14.6. No Release. No Sublease or Assignment by Tenant nor any consent by Landlord thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article shall be null and void and, at the option of Landlord, shall constitute an Event of Default by Tenant under this Lease, and Landlord shall be entitled to pursue any right or remedy available to Landlord under the terms of this Lease or under the laws of the State of California. The acceptance of any Rent or other payments by Landlord from a proposed Transferee shall not constitute consent to such Sublease or Assignment by Landlord or a recognition of any Transferee, or a waiver by Landlord of any failure of Tenant or other Transferor to comply with this Article.

14.7. Assumption of Obligations. Any Transferee shall, from and after the effective date of the Assignment, assume all obligations of Tenant under this Lease with respect to the Transferred Space and shall be and remain liable jointly and severally with Tenant for the payment of Base Rent and Additional Rent, and for the performance of all of the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. No Assignment shall be binding on Landlord unless Tenant delivers to Landlord a counterpart of the Assignment and an instrument that contains a covenant of assumption reasonably satisfactory in substance and form to Landlord, and consistent with the requirements of this Section.

14.8. Financing. Landlord agrees and acknowledges that Tenant is required under the terms of its Advance Technology Vehicle Manufacturing Loan to grant to the United States Department of Energy and the Federal Funding Bank a first priority security interest in Tenant's leasehold interest in the Premises. In no event shall any interest of Landlord in the Premises, including without limitation, Landlord's fee interest in the Premises or interest under this Lease, be subject or subordinate to such financing.

15. DEFAULT

15.1. Event of Default. The occurrence of any of the following shall be an ***"Event of Default"*** on the part of Tenant:

(a) Failure to pay any part of the Base Rent or Additional Rent, or any other sums of money that Tenant is required to pay under this Lease where such failure continues for a period of three (3) days after written notice of default from Landlord to Tenant. Landlord's notice to Tenant pursuant to this subsection shall be deemed to be the notice required under California Code of Civil Procedure Section 1161.

(b) Failure to perform any other covenant, condition or requirement of this Lease when such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to have occurred if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently and continuously prosecute such cure to completion. Landlord's notice to Tenant pursuant to this subsection shall be deemed to be the notice required under California Code of Civil Procedure Section 1161.

(c) The abandonment of the Premises by Tenant.

(d) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or

hereafter in effect, or Tenant shall make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

(e) A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Tenant or of the whole or any substantial part of the Premises and such order, judgment or decree shall not be vacated, set aside or stayed within thirty (30) days after the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set aside.

(f) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, dissolution or liquidation law or statute of the federal or state government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within thirty (30) days from the date of entry of such order, judgment or decree, or a stay thereof shall be thereafter set aside.

15.2. Remedies. Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies:

(a) The right to terminate this Lease upon written notice to Tenant, in which event Tenant shall immediately surrender possession of the Premises in accordance with Article 20.

(b) The right to bring a summary action for possession of the Premises.

(c) The rights and remedies described in California Civil Code Section 1951.2, pursuant to which Landlord may recover from Tenant upon a termination of the Lease, (i) the worth at the time of award of the unpaid rent which has been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum or the highest rate permitted by law, whichever is lower (the ***"Interest Rate"***). The "worth at the time of award" of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom includes, without limitation, (1) the unamortized portion of any brokerage or real estate agent's commissions paid in connection with the execution of this Lease, (2) any direct costs or expenses incurred by Landlord in recovering possession of the Premises, maintaining or preserving the Premises after such default, (3) preparing the Premises for reletting to a new tenant, (4) any repairs or alterations to the Premises for such reletting, (5) leasing commissions, architect's fees and any other costs necessary or appropriate either to relet the Premises or, if reasonably necessary in order to relet the Premises, to adapt them to another beneficial use by Landlord and (6) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law to the extent that such payment would not result in a duplicative recovery.

(d) The rights and remedies described in California Civil Code Section 1951.4 which allow Landlord to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Base Rent, Additional Rent and other charges payable hereunder as they become due. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.

(e) The right and power, as attorney-in-fact for Tenant, to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant under any permitted subleases. Landlord is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as Landlord deems necessary. Landlord is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as Landlord in its reasonable discretion may deem proper. Tenant shall be liable immediately to Landlord for all costs and expenses Landlord incurs in reletting the Premises including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and the cost of collecting rents and fulfilling the obligations of Tenant to any subtenant. If Landlord relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that Landlord shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate Landlord for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease, by expiration of the Term or otherwise, to recover them by legal action or in any other manner. Landlord may execute any sublease made pursuant to this Section in its own name, and the tenant thereunder shall be under no obligation to see to the application by Landlord of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. Landlord shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless Landlord shall have given Tenant express written notice of Landlord's election to do so as set forth herein.

(f) The right to enjoin, and any other remedy or right now or hereafter available to a Landlord against a defaulting tenant under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

15.3. Cumulative Remedies. The various rights and remedies reserved to Landlord, including those not specifically described herein, shall, to the extent that the exercise of such right and/or remedy does not result in a duplicative recovery, be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Landlord of any or all other rights and remedies.

15.4. Waiver of Redemption by Tenant. Tenant hereby waives any right to relief against forfeiture of this Lease pursuant to California Code of Civil Procedure Section 1179.

15.5. Landlord's Right to Cure. If Tenant shall fail or neglect to do or perform any covenant or condition required under this Lease and such failure shall not be cured within any applicable grace period, Landlord may, on five (5) days notice to Tenant, but shall not be required to, make any payment payable by Tenant hereunder, discharge any lien, take out,

pay for and maintain any insurance required hereunder, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Landlord shall so elect), and Landlord shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Tenant on account thereof. Tenant shall repay to Landlord within twenty (20) days after demand the entire out-of-pocket cost and expense incurred by Landlord in connection with the cure, including, without limitation, compensation to the agents, consultants and contractors of Landlord and reasonable attorneys' fees and expenses. Landlord may act upon shorter notice or no notice at all if necessary in Landlord's reasonable judgment to meet an emergency situation or governmental or municipal time limitation or to protect Landlord's interest in the Premises. Landlord shall not be required to inquire into the correctness of the amount of validity or any tax or lien that may be paid by Landlord and Landlord shall be duly protected in paying the amount of any such tax or lien claimed and in such event Landlord also shall have the full authority, in Landlord's sole judgment and discretion and without prior notice to or approval by Tenant, to settle or compromise any such lien or tax. Any act or thing done by Landlord pursuant to the provisions of this Section shall not be or be construed as a waiver of any such failure by Tenant, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof.

15.6. Landlord's Default. Landlord shall be in default under this Lease if Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Tenant shall be entitled to actual (but not consequential) damages in the event of an uncured default by Landlord, but the provisions of Article 17 shall apply to any Landlord default and Tenant shall not have the right to terminate this Lease as a result of a Landlord default.

16. LANDLORD'S RESERVED RIGHTS

16.1. Access. Landlord reserves (for itself and its Agents, consultants, contractors and any third parties Landlord deems to reasonably require access) the right to enter the Premises at all reasonable times and, except in cases of emergency, after giving Tenant reasonable notice, to inspect the Premises; to supply any service to be provided by Landlord hereunder; to show the Premises to prospective purchasers or mortgagees; to show the Premises to prospective tenants during the last year of the Term; to post notices of nonresponsibility; and to perform it obligations and exercise its rights under the Conservation Easement (as defined in Section 16.3). In addition to the foregoing, Landlord reserves (for itself and its Agents, consultants, contractors and any third parties Landlord deems to reasonably require access) the right to enter the Premises at all reasonable times and, except in cases of emergency, after giving Tenant reasonable notice, to perform any environmental testing, monitoring, cleanup, remediation, containment or restoration work, and may for that purposes erect, use and maintain necessary structures and equipment in the Premises where reasonably required by the character of the work to be performed. Without limiting the foregoing, Tenant agrees and acknowledges that Landlord has entered into that certain Access Agreement with Hewlett-Packard Company dated as of November 15, 2007, a copy of which is attached as **Exhibit E** (the ***"H-P Access Agreement"***), pursuant to which H-P has the right of access to the Premises as set forth therein. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby, except to the extent caused by the gross negligence or willful misconduct of Landlord in the exercise of its rights and provided that Landlord shall use reasonable efforts not to materially adversely affect Tenant's

use of the Premises. All locks for all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance in writing by Tenant) shall at all times be keyed to a master system and Landlord shall at all times have and retain a key with which to unlock all of said doors. Landlord shall have the right to use any and all means that Landlord may deem necessary or proper to open said doors in an emergency in order to obtain entry to any portion of the Premises, and any such entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

16.2. Easements. Landlord reserves the right to grant or relocate all easements and rights of way which Landlord in its sole discretion may deem necessary or appropriate; provided that Tenant's rights to use the Premises for the operation of its business is not materially impeded. Without limiting the foregoing, Tenant acknowledges that Landlord is developing and delineating future easements that are identified on **Exhibit A-1**.

16.3. Conservation Easement. Landlord hereby reserves a conservation easement (***"Conservation Easement"***) over the Premises, in the area identified on **Exhibit A-1** (the ***"Conservation Easement Area"***), for purposes of protecting endangered species and their habitats in and adjacent to Deer Creek. Section 9 of the Federal Endangered Species Act prohibits the "taking" of wildlife species listed as threatened or endangered, which is defined as an act which kills or injures wildlife, including those activities that cause significant habitat or behavioral modification or degradation. Tenant acknowledges that Landlord has applied for a Habitat Conservation Plan (***"HCP"***) with federal agencies that will, when and if approved, set forth protective measures that will minimize the taking of endangered species on Stanford lands. The Conservation Easement Area is a component of this broader HCP.

(a) Tenant will provide Landlord, any grantee of the Conservation Easement, and applicable state and federal agencies, unrestricted access to the Conservation Easement Area for purposes of surveying, monitoring, maintaining, restoring and enhancing vegetation and habitat, including the right to install new vegetation or landscape or structures for the purpose of implementing and maintaining the HCP, and the removal of existing structures or vegetation that degrade the habitat.

(b) Without limiting the foregoing, Landlord will have the right to impose from time to time site specific rules and regulations (***"Conservation Rules"***) for the Conservation Easement Area that set forth Tenant's permitted and non-permitted uses of the Conservation Easement Area, so long as such Conservation Rules will not materially increase the costs to Tenant to manage the Premises. The Conservation Rules may restrict Tenant's access and possibly even intermittently or exclusively prohibit access by Tenant or Tenant's Agents in the Conservation Easement Area. However, Landlord will use best efforts to preserve for Tenant some access and use of the Conservation Easement Area for passive recreation, if Landlord deems that such use would not lead to an actual or potential taking of an endangered species or jeopardize the goals and objectives of the HCP. Tenant acknowledges that as of the Commencement Date of this Lease, the initial Conservation Rules shall be as set forth in **Exhibit F**, and that Landlord may modify or change these rules as necessary to comply with its obligations under the HCP. Any such change or modification shall require at least ten (10) Business Days prior notification to Tenant.

(c) If and when the HCP is approved and an Incidental Take Permit is issued to Landlord, Landlord shall offer Tenant the right to secure a Certificate of Inclusion which shall afford Tenant those protections provided to Landlord by the HCP.

16.4. Use of Additional Areas. Landlord reserves the exclusive right to use any air space above the Premises, and the land beneath the Premises; provided that such use shall not materially impede Tenant's use of and access to the Premises.

16.5. Subordination. This Lease shall be subject and subordinate at all times to: (a) all reciprocal easement agreements, environmental access agreements (including the H-P Access Agreement), the Conservation Easement and the HCP, and any ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises, and (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises, or any ground leases or underlying leases, or Landlord's interest or estate in any of said items, is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any of the items referred to in clause (a) or (b) above, subject to compliance with the condition precedent set forth below. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, (i) no person or entity which as a result of the foregoing succeeds to the interest of Landlord under this Lease, (a ***"Successor"***) shall be liable for any default by Landlord or any other matter that occurred prior to the date the Successor succeeded to Landlord's interest in this Lease, and (ii) Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the Successor and Tenant will not be disturbed in its use of the Premises pursuant to the terms of this Lease. Tenant covenants and agrees, however, to execute and deliver, upon demand by Landlord and in the form reasonably requested by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, reciprocal easement agreements or similar documents or instruments, or with respect to the lien of any such mortgage or deed of trust and Tenant's failure to execute and deliver any such document within ten (10) Business Days after such demand by Landlord shall constitute an Event of Default without further notice so long as such subordination is accompanied by a non-disturbance agreement that states that so long as an Event of Default by Tenant is not in existence, neither this Lease nor any of Tenant's rights hereunder shall be terminated or modified, nor shall Tenant's possession of the Premises be disturbed or interfered with, by any trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

17. LIMITATION OF LANDLORD'S LIABILITY

17.1. Limitation. Landlord shall not be responsible for or liable to Tenant and Tenant hereby releases Landlord, waives all claims against Landlord and assumes the risk for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct) including, without limitation, (a) acts or omissions of persons occupying adjoining premises, (b) theft or vandalism, (c) burst, stopped or leaking water, gas, sewer or steam pipes, (d) loss of utility service, (e) accident, fire or casualty, or (f) nuisance, and also for work done by Landlord in the Premises other than Landlord's active negligence. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements to any portion of the Premises or to fixtures, appurtenances and equipment in the Premises; provided, however, that in the event Landlord fails to perform its obligations to make repairs, alterations or improvements or performs such obligations in a negligent manner in each case which results in Tenant being unable to operate its business at the Premises for a period of more than five (5) days, then Tenant shall be entitled to an abatement of Rent commencing on the sixth (6th) business day Tenant is unable to operate and continuing until the Premises are again available for operation of Tenant's business. Such Rent abatement shall be Tenant's only remedy in the event of a negligent interference with Tenant's business and Tenant shall not be entitled to damages or to termination of this Lease arising from Landlord's repairs, alterations or improvements. No interference with Tenant's operations in the Premises shall constitute a constructive or other

eviction of Tenant. Tenant hereby waives and releases any right it may have to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, or under any similar law, statute or ordinance now or hereafter in effect.

17.2. Sale of Premises. It is agreed that Landlord may at any time sell, assign or transfer its interest as landlord in and to this Lease, and may at any time sell, assign or transfer its interest in and to the Premises. In the event of any transfer of Landlord's interest in this Lease or in the Premises, the transferor shall be automatically relieved of any and all of Landlord's obligations and liabilities accruing from and after the date of such transfer; provided that the transferee assumes all of Landlord's obligations under this Lease. Tenant hereby agrees to attorn to Landlord's assignee, transferee, or purchaser from and after the date of notice to Tenant of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance by and between Tenant and the assignee, transferee or purchaser.

17.3. No Personal Liability. In the event of any default by Landlord hereunder, Tenant shall look only to Landlord's interest in the Premises and rents therefrom and any available insurance proceeds for the satisfaction of Tenant's remedies, and no other property or assets of Landlord or any trustee, partner, member, officer or director thereof, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease.

18. DESTRUCTION

18.1. Landlord's Repair Obligation. If the Premises or any portion thereof is damaged by fire or other casualty, Landlord shall undertake the repair and restoration of the Premises, subject to the terms and conditions of this Article 18.

18.2. Termination by Landlord. Notwithstanding Section 18.1, in the event (a) the repair and restoration of the Premises will require an out-of-pocket expenditure by Landlord in excess of One Hundred Thousand Dollars ($100,000), or (b) the out-of-pocket cost to Landlord of repair and restoration when added to the out-of-pocket cost of any previous casualty expenditures with respect to the Premises will exceed a cumulative total of One Hundred Thousand Dollars ($100,000), or (c) the repair will take longer than two hundred seventy (270) days after the date of the casualty, then Landlord shall have the option, exercisable within sixty (60) days after the date of such damage, either to: (i) notify Tenant of Landlord's intention to repair such damage, in which event this Lease shall continue in full force and effect (unless terminated by Tenant pursuant to Section 18.3 below), or (ii) notify Tenant of Landlord's election to terminate this Lease as of the date of the damage. If such notice to terminate is given by Landlord, this Lease shall terminate as of the date of such damage, unless Tenant elects by written notice to Landlord delivered within ten (10) Business Days after receipt of Landlord's termination notice to pay for all excess repair costs. In the event Tenant so elects, Tenant shall pay such excess repair costs within ten (10) Business Days after receipt of a reasonably detailed estimate of such costs, and Landlord's obligation to commence repairs shall be conditioned on receipt of such funds. Excess repair costs shall be deemed to include all soft and hard costs of the repair and restoration, less (A) any insurance proceeds actually received by Landlord, and (B) a contribution to the cost by Landlord not to exceed the lesser of (x) $100,000, and (y) the sum that when added to all other casualty expenditures previously made by Landlord would equal $100,000.

18.3. Termination by Tenant. If Landlord elects to repair the damage and any such repair (a) is not or cannot practicably be substantially completed by Landlord within two hundred seventy (270) days after the occurrence of such damage or destruction (or in the case of damage occurring in the last twelve (12) months of the Term, within sixty (60) days), and (b) such damage has a material adverse impact on Tenant's business operations at the

Premises, then in such event Tenant may, at its option, upon written notice to Landlord to be delivered within fifteen (15) days after receipt of Landlord's notice, elect to terminate this Lease as of the date of the occurrence of such damage or destruction.

18.4. Rent Adjustment. In case of termination pursuant to Sections 18.2 or 18.3 above, the Rent shall be reduced by a proportionate amount based upon the Rentable Area of the Premises rendered unusable, and Tenant shall pay such reduced Rent up to the date of vacation of the Premises. If Landlord elects to make repairs, and Tenant does not terminate this Lease pursuant to Section 18.3, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Rent from the date of such casualty and during the period such repairs are being made by a proportionate amount based upon the Rentable Area of the Premises rendered unusable; provided that any such Rent reduction shall be limited to the amount of insurance proceeds actually received by Landlord pursuant to Section 13.2(d), and Tenant shall remain liable for any excess Rent. The full amount of Rent shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration. The repairs to be made by Landlord under this Article shall not include, and Landlord shall not be required to repair, any casualty damage to the Tenant Improvement Work, Tenant's Property or any Alterations.

18.5. Tenant Obligations. If Landlord elects to repair, reconstruct or restore the Premises after any damage or destruction, Tenant shall be responsible at its own expense for the repair and replacement of any of the Tenant Improvement Work, Tenant's Property and any Alterations which Tenant elects to replace.

18.6. No Claim. Tenant shall have no interest in or claim to any portion of the proceeds of any property insurance or self-insurance maintained by Landlord in connection with the damage. If Landlord elects not to rebuild the Premises, Landlord shall relinquish to Tenant such claim as Landlord may have for any part of the proceeds of any insurance maintained by Tenant under Section 13.2 of this Lease.

18.7. No Damages. If Landlord elects to make any repairs, reconstruction or restoration of any damage or destruction to the Premises under any of the provisions of this Article 18, Tenant shall not be entitled to any damages by reason of any inconvenience or loss sustained by Tenant as a result thereof. Except as expressly provided in Section 18.4 there shall be no reduction, change or abatement of any rental or other charge payable by Tenant to Landlord hereunder, or in the method of computing, accounting for or paying the same. Tenant hereby waives the provisions of Section 1932(2) and Section 1933(4) of the California Civil Code, or any other statute or law that may be in effect at the time of a casualty under which a lease is automatically terminated or a tenant is given the right to terminate a lease due to a casualty.

19. EMINENT DOMAIN

19.1. Taking. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so taken as of the date of taking or as of the date of final judgment, whichever is earlier, and, in the case of a partial taking, Landlord shall have the right to terminate this Lease as to the balance of the Premises by written notice to Tenant within thirty (30) days after such date.

19.2. Award. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall assign to Landlord any right to compensation or damages for the condemnation of its leasehold interest. Nothing contained herein shall be deemed to prohibit Tenant from making a separate claim against the

condemning authority for the value of Tenant's Property and moving expenses, provided such claim does not delay or diminish Landlord's claim or award.

19.3. Partial Taking. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Base Rent shall be adjusted as follows:

(a) In the event of a partial taking, if this Lease is not terminated pursuant to this Article 19, Landlord shall repair, restore or reconstruct the Premises to a useable state; provided that Landlord shall not be required to expend any sums other than those received pursuant to Section 19.2, and in the event Tenant does not elect to reimburse Landlord for such excess costs within thirty (30) days after notice from Landlord as to the amount of such excess cost, Landlord may elect to terminate this Lease;

(b) During the period between the date of the partial taking and the completion of any necessary repairs, reconstruction or restoration, Tenant shall be entitled to a reduction of Base Rent by a proportionate amount based upon the extent of interference with Tenant's operations in the Premises; and

(c) Upon completion of said repairs, reconstruction or restoration, and thereafter throughout the remainder of the Term, the Base Rent shall be recalculated based on the remaining total number of square feet of Rentable Area of the Premises.

19.4. Temporary Taking. Notwithstanding any other provision of this Article, if a taking occurs with respect to all or any portion of the Premises for a period of six (6) months or less, this Lease shall remain unaffected thereby and Tenant shall continue to pay Base Rent and Additional Rent and to perform all of the terms, conditions and covenants of this Lease, provided that Tenant shall have the right to terminate this Lease if the taking continues beyond six (6) months by giving Landlord notice of such termination within twenty (20) days following the expiration of such six (6) month period. If Tenant exercises such termination right, this Lease and the estate hereby granted shall terminate as of the thirtieth (30th) day following the giving of such notice. In the event of any such temporary taking, and if this Lease is not terminated, Tenant shall be entitled to receive that portion of any award which represents compensation for the use or occupancy of the Premises during the Term up to the total Base Rent and Additional Rent owing by Tenant for the period of the taking, and Landlord shall be entitled to receive the balance of any award.

19.5. Sale in Lieu of Condemnation. A voluntary sale by Landlord of all or any part of the Premises to any public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain for the purposes of this Article.

19.6. Waiver. Except as provided in this Article, Tenant hereby waives and releases any right it may have under any Applicable Law to terminate this Lease as a result of a taking, including without limitation Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, or any similar law, statute or ordinance now or hereafter in effect.

20. SURRENDER

20.1. Surrender. On or before the ninetieth (90th) day preceding the Expiration Date, Tenant shall notify Landlord in writing of the precise date (the ***"Move-Out Date"***) upon which Tenant plans to surrender the Premises to Landlord. At least sixty (60) days prior to the Move-Out Date, Landlord and Tenant shall walk through the Premises to identify any repair and removal work to be performed by Tenant pursuant to Sections 9.6 or 9.7, or due to Tenant's failure to perform any other obligation set forth in this Lease; provided that failure by

any party to participate in the walk-through shall not relieve Tenant of any of its obligations hereunder. Prior to the Termination Date, Tenant shall repair at Tenant's sole cost, all damage to the Premises that causes material damage to the Building Structure or Building Systems, impairs access to the Premises, or poses a threat to worker safety, to the extent such damage was caused by removal of Tenant's Property, the Tenant Improvement Work and any Alterations as required under this Lease. Upon the Termination Date, Tenant shall surrender the Premises to Landlord in as good order and repair as on the Commencement Date, reasonable wear and tear and damage by casualty excepted, free and clear of all letting and occupancies and with Tenant's Hazardous Materials removed as required pursuant to Article 12. Subject to Article 9, upon any termination of this Lease all improvements, except for Tenant's Property, shall automatically and without further act by Landlord or Tenant, become the property of Landlord, free and clear of any claim or interest therein by Tenant, and without payment therefore by Landlord. If the Premises are not surrendered as of the end of the Term in the manner and condition described in this Section 20.1, Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all Losses resulting from or caused by Tenant's delay or failure in so surrendering the Premises, including, without limitation, any lost rents and any claims made by any succeeding tenant due to such delay or failure and any loss or damage incurred by Landlord as a result of any delay in Landlord's redevelopment plans for the Premises.

20.2. Holding Over. Any holding over after the expiration of the Term with the consent of Landlord shall be construed to automatically extend the Term on a month-to-month basis at a Base Rent equal to the greater of (a) one and one-half times the then-current Base Rent, and (b) prevailing rate at which Landlord is then offering space in buildings reasonably determined by Landlord to be comparable to the Premises, and shall otherwise be on the terms and conditions of this Lease to the extent applicable. Any holding over without Landlord's consent shall entitle Landlord to exercise any or all of its remedies provided in Article 15, notwithstanding that Landlord may elect to accept one or more payments of Base Rent and Additional Rent from Tenant.

20.3. Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company, licensed to operate in the State of California, to remove the cloud or encumbrance created by this Lease from the Premises.

21. FINANCIAL STATEMENTS

Tenant shall tender to Landlord within ten (10) Business Days after receipt of a written request any information reasonably requested by Landlord regarding the financial stability, credit worthiness or ability of Tenant to pay the Rent due under this Lease. Landlord shall be entitled to rely upon the information provided in determining whether or not to enter into this Lease or for the purpose of any financing or other transaction subsequently undertaken by Landlord. Tenant hereby represents and warrants to Landlord the following: (a) that all documents provided by Tenant to Landlord in connection with the negotiation of this Lease are true and correct copies of the originals, (b) Tenant has not withheld any information from Landlord that is material to Tenant's credit worthiness, financial condition or ability to perform its obligations hereunder, (c) all information supplied by Tenant to Landlord is true, correct and accurate, (d) no part of the information supplied by Tenant to Landlord contains any misleading or fraudulent statements, and (e) Tenant has secured a Series E financing commitment of at least $50,000,000. A default under this Article shall be a non-curable default by Tenant and Landlord shall be entitled to pursue any right or remedy available to Landlord under the terms of this Lease or available to Landlord under the laws of the State of California. Landlord shall be entitled to disclose Tenant's financial information to (i) its agents, employees and consultants, (ii) potential purchasers of an interest in the Premises, and (iii) lenders contemplating making a

loan to the Landlord to be secured by the Premises, provided that such recipients are advised of the confidential nature of such information and agree to maintain such confidentiality.

22. TENANT CERTIFICATES

Tenant, at any time and from time to time within ten (10) Business Days after receipt of written notice from Landlord, shall execute, acknowledge and deliver to Landlord or to any party designated by Landlord (including prospective lenders, purchasers, ground lessees and others similarly situated), a certificate of Tenant stating, to the best of Tenant's knowledge: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications), (d) whether or not there are then known to exist any defenses against the enforcement of any of the obligations of Tenant under this Lease (and, if so, specifying same), (e) whether or not there are then known to exist any defaults by Landlord in the performance of its obligations under this Lease (and, if so, specifying same), (f) the dates, if any, to which the Base Rent and Additional Rent have been paid, and (g) any other factual information relating to the rights and obligations under this Lease that may reasonably be required by any of such persons. Failure to deliver such certificate when due shall constitute an Event of Default. At the request of Tenant, Landlord shall execute, acknowledge and deliver to Tenant a certificate with similar types of information and in the time period set forth above. Failure by either Landlord or Tenant to execute, acknowledge and deliver such certificate shall be conclusive evidence that this Lease is in full force and effect and has not been modified except as may be represented by the requesting party. If any term in any certificate conflicts with the terms of this Lease, the terms of this Lease shall govern.

23. RULES AND REGULATIONS; SIGNS

23.1. Rules and Regulations. Tenant shall faithfully observe and comply with all reasonable rules and regulations, and all reasonable modifications thereof and additions thereto from time to time put into effect by Landlord (the ***"Rules and Regulations"***). Landlord shall not enforce such Rules and Regulations in an unreasonable or discriminatory manner. In the event of any conflict between the terms of this Lease and the terms, covenants, agreements and conditions of the Rules and Regulations, this Lease shall control.

23.2. Signs. Tenant shall have the right, at Tenant's sole cost and expense, to install Tenant's name on one existing road-side monument. Tenant shall also have the right to place signage on the Buildings. All signage to be installed by Tenant pursuant to this Section 23.2 shall comply with Applicable Law, the Stanford Research Park Handbook and shall be subject to the prior written consent of Landlord, not to be unreasonably withheld, and, if required, the approval of the City of Palo Alto.

24. INABILITY TO PERFORM

If Landlord is unable to fulfill or is delayed in fulfilling any of Landlord's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials or by any other reason beyond Landlord's reasonable control, then such inability or delay by Landlord shall excuse the performance of Landlord for a period equal to the duration of such prevention, delay or stoppage, and no such inability or delay by Landlord shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Base Rent or Additional Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or Landlord's Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. If Tenant is unable to fulfill or is delayed in fulfilling

any of Tenant's obligations under this Lease (other than the payment of Rent), by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials or by any other reason beyond Tenant's reasonable control, then such inability or delay by Tenant shall excuse the performance of Tenant for a period equal to the duration of such prevention, delay or stoppage. Tenant hereby waives and releases any right to terminate this Lease under Section 1932(1) of the California Civil Code, or any similar law, statute or ordinance now or hereafter in effect.

25. NOTICES

Notices or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by certified mail with a return receipt requested, or delivered in person or by reputable overnight courier (e.g., Federal Express, DHL, etc.): (a) to Tenant (i) at Tenant's address set forth in Article 1, if sent prior to the Commencement Date, or (ii) at the Premises and at the "copy to" address specified in Article 1 if sent subsequent to the Commencement Date, or (iii) at the place where Tenant designates subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (b) to Landlord at Landlord's address set forth in Article 1; or (c) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Article. Any such notice or other communication shall be deemed to have been rendered or given five (5) days after the date mailed, if sent by certified mail, or upon the date of delivery in person or by courier, or when delivery is attempted but refused.

26. QUIET ENJOYMENT

Landlord covenants that so long as an Event of Default by Tenant is not in existence, upon paying the Base Rent and Additional Rent and performing all of its obligations under this Lease, Tenant shall peaceably and quietly enjoy the Premises, subject to the terms and provisions of this Lease.

27. AUTHORITY

27.1. Tenant's Authority. If Tenant is a corporation, limited liability company or a partnership, Tenant represents and warrants as follows: Tenant is an entity as identified in Article 1, duly formed and validly existing and in good standing under the laws of the state of organization specified in Article 1 and qualified to do business in the State of California. Tenant has the power, legal capacity and authority to enter into and perform its obligations under this Lease and no approval or consent of any person is required in connection with the execution and performance hereof. The execution and performance of Tenant's obligations under this Lease will not result in or constitute any default or event that would be, or with notice or the lapse of time would be, a default, breach or violation of the organizational instruments governing Tenant or any agreement or any order or decree of any court or other governmental authority to which Tenant is a party or to which it is subject. Tenant has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Tenant. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

27.2. Landlord's Authority. Landlord represents and warrants as follows: Landlord has the power, legal capacity and authority to enter into and perform its obligations under this Lease and no approval or consent of any person is required in connection with the execution and performance hereof. The execution and performance of Landlord's obligations under this Lease will not result in or constitute any default or event that would be, or with notice or the lapse of time would be, a default, breach or violation of the organizational instruments

governing Landlord or any agreement or any order or decree of any court or other governmental authority to which Landlord is a party or to which it is subject. Landlord has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Landlord.

28. BROKERS

Tenant and Landlord warrant that they have had dealings with only the real estate brokers or agents listed in Article 1 in connection with the negotiation of this Lease and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Landlord shall pay for the brokerage commission earned in connection with this transaction by Tenant's Broker pursuant to the terms of a separate agreement between Landlord and Tenant's Broker. Tenant and Landlord shall indemnify, defend and hold the other harmless from and against all liabilities arising from any other claims of brokerage commissions or finder's fees based on Tenant's or Landlord's, as applicable, dealings or contacts with brokers or agents other than those listed in Article 1.

29. MISCELLANEOUS

29.1. Entire Agreement. This Lease, including the exhibits which are incorporated herein and made a part of this Lease and that certain letter agreement dated May 22, 2009 from Annette Walton to Craig Harding regarding environmental reports, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Tenant hereby acknowledges that neither Landlord nor Landlord's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, or therein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein or therein.

29.2. No Waiver. No failure by Landlord or Tenant to insist upon the strict performance of any obligation of Tenant or Landlord under this Lease or to exercise any right, power or remedy consequent upon a breach thereof, no acceptance of full or partial Base Rent or Additional Rent during the continuance of any such breach by Landlord, or payment of Base Rent or Additional Rent by Tenant to Landlord, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any employee or agent of Landlord shall constitute a waiver of any such breach or of such term, covenant or condition or operate as a surrender of this Lease. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. The consent of Landlord or Tenant given in any instance under the terms of this Lease shall not relieve Tenant or Landlord, as applicable, of any obligation to secure the consent of the other in any other or future instance under the terms of this Lease.

29.3. Modification. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

29.4. Successors and Assigns. The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided or limited herein, their respective personal representatives and successors and assigns.

29.5. Validity. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than

those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

29.6. Jurisdiction. This Lease shall be construed and enforced in accordance with the laws of the State of California. Any action that in any way involves the rights, duties and obligations of the parties under this Lease may (and if against Landlord, shall) be brought in the courts of the State of California or the United States District Court for the District of California, and the parties hereto hereby submit to the personal jurisdiction of said courts.

29.7. Attorneys' Fees. In the event that either Landlord or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs, costs of arbitration and reasonable attorneys' fees.

29.8. Waiver of Jury Trial. Landlord and Tenant each hereby voluntarily and knowingly waive and relinquish their right to a trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord with Tenant, or Tenant's use or occupancy of the Premises, including any claim of injury or damage, and any emergency and other statutory remedy with respect thereto.

29.9. Intentionally Omitted

29.10. Light and Air. Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of the Base Rent or Additional Rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

29.11. Lease Memorandum. If required to do so in connection with the funding described in Section 5.4(d), Landlord will execute and acknowledge a memorandum of lease for recordation in the Official Records of Santa Clara County in a form reasonably acceptable to Landlord.

29.12. Confidentiality. The parties agree that neither of them shall make public the terms and conditions of this Lease or the fact that they have entered into this Lease to any person other than a party's accountants, attorneys, brokers, prospective ground lessees, investors, consultants or financial advisors without first obtaining the written permission from the other party, except to the extent otherwise required by Applicable Law. In addition, Landlord agrees that all financial information provided to Landlord by Tenant pursuant to Section 21 shall be subject to the foregoing confidentiality requirements.

29.13. Terms. The term "Premises" includes the space leased hereby and any improvements now or hereafter installed therein or attached thereto. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant or Landlord, the obligations under this Lease imposed on Tenant or Landlord shall be joint and several. The captions preceding the articles of this Lease have been inserted solely as a matter of convenience and such captions in no way define or limit the scope or intent of any provision of this Lease.

29.14. Review and Approval. The review, approval, inspection or examination by Landlord of any item to be reviewed, approved, inspected or examined by

Landlord under the terms of this Lease or the exhibits attached hereto shall not constitute the assumption of any responsibility by Landlord for either the accuracy or sufficiency of any such item or the quality of suitability of such item for its intended use. Any such review, approval, inspection or examination by Landlord is for the sole purpose of protecting Landlord's interests in the Premises and under this Lease, and no third parties, including, without limitation, Tenant or any person or entity claiming through or under Tenant, or the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person or entity, shall have any rights hereunder with respect to such review, approval, inspection or examination by Landlord.

29.15. No Beneficiaries. This Lease shall not confer or be deemed to confer upon any person or entity other than the parties hereto, any right or interest, including without limitation, any third party status or any right to enforce any provision of this Lease.

29.16. Time of the Essence. Time is of the essence in respect of all provisions of this Lease in which a definite time for performance is specified.

29.17. Modification of Lease. In the event of any ruling or threat by the Internal Revenue Service, or opinion of counsel, that all or part of the Rent paid or to be paid to Landlord under this Lease will be subject to the income tax or unrelated business taxable income, Tenant agrees to modify this Lease to avoid such tax; provided that such modifications will not result in any increase in Rent, or any increased obligations of Tenant under this Lease. Landlord will pay all Tenant's reasonable costs incurred in reviewing and negotiating any such lease modification, including reasonable attorneys' and accountants' fees.

29.18. Construction. This Lease has been negotiated extensively by Landlord and Tenant with and upon the advice of their respective legal counsel, all of whom have participated in the drafting hereof. Consequently, Landlord and Tenant agree that no party shall be deemed to be the drafter of this Lease and in the event this Lease is ever construed by a court of law, such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

29.19. Use of Name. Tenant acknowledges and agrees that the names ***"The Leland Stanford Junior University," "Stanford"*** and ***"Stanford University,"*** and all variations thereof, are proprietary to Landlord. Tenant shall not use any such name or any variation thereof or identify Landlord in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or use any trademark, service mark, trade name or symbol of Landlord or that is associated with it, without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. Notwithstanding the foregoing, Tenant may use the term "Stanford Research Park" only to identify the location of the Premises.

29.20. Survival. The obligations of this Lease shall survive the expiration of the Term to the extent necessary to implement any requirement for the performance of obligations or forbearance of an act by either party hereto which has not been completed prior to the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent thereof, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant or condition. Notwithstanding the foregoing, in the event a specific term, covenant or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over this general provisions of this Lease.

29.21. Counterparts. This Lease may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one original of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

LANDLORD:

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Its: ASSOCIATE DIRECTOR, REAL ESTATE

TENANT:

TESLA MOTORS, INC.
a Delaware corporation

By: _____

Its: CTO

By: _____

Its: General Counsel & Secretary

GLOSSARY

DEFINITIONS

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural form of the terms defined below:

"ADA" is defined in Section 11.1.

"Additional Rent" is defined in Section 5.2.

"Affiliate" is defined in Section 14.1.

"Alterations" are defined in Section 9.3.

"Applicable Laws" are defined in Section 11.1.

"Approved Plan" is defined in Section 12.3.

"Assignment" is defined in Section 14.1.

"Base Rent" means the amount stated in Article 1, payable in accordance with Article 5.

"Buildings" are defined in Section 2.1.

"Building Structure" is defined in Section 8.2.

"Building Systems" are defined in Section 8.2.

"Business Days" means Monday through Friday, excluding federal and state legal holidays.

"Commencement Date" is defined in Section 4.1.

"Conservation Easement" is defined in Section 16.3.

"Conservation Easement Area" is defined in Section 16.3.

"Conservation Rules" are defined in Section 16.3(b).

"Effective Date" is defined in the introductory paragraph.

"Environmental Activity" is defined in Section 12.1(a).

"Environmental Investigation" is defined in Section 12.7.

"Environmental Laws" are defined in Section 12.1(b).

"Event of Default" is defined in Section 15.1.

"Excess Rent" is defined in Section 14.4.

"Exacerbation" is defined in Section 12.1(c).

"Expiration Date" means the date specified in Article 1.

"First Renewal Option" is defined in Section 4.4.

"First Renewal Term" is defined in Section 4.4.

"Hazardous Material" is defined in Section 12.1(d).

"H-P Access Agreement" is defined in Section 16.1.

"Indoor Air Screening Level" is defined in Section 4.4.

"Initial Space" is defined in Section 4.2.

"Insurance Costs" are defined in Section 7.4.

"Interest Rate" is defined in Section 15.2(c).

"Landlord" is defined in the introductory paragraph to this Lease.

"Landlord's Agents" are defined in Section 12.5(a).

"Landlord's Environmental Work" is defined in Section 9.1.

"Landlord's Work" is defined in Section 9.1.

"L-C Bank" is defined in Section 5.4(c).

"Losses" are defined in Section 13.1.

"Main HVAC System Components" are defined in Section 8.1.

"Move-Out Date" is defined in Section 20.1.

"Offer" is defined in Section 14.5.

"Parking Area" is defined in Section 2.2.

"Permitted Transferee" is defined in Section 14.1.

"Pre-Existing Condition" is defined in Section 12.2(a).

"Premises" is defined in Section 2.1.

"Real Property Taxes" are defined in Section 7.2.

"Remaining Materials" are defined in Section 9.1.

"Renewal Options" is defined in Section 4.4.

"Renewal Terms" are defined in Section 4.4.

"Rent" is defined in Section 5.2.

"Rentable Area" means the enclosed areas of the Premises measured to the outside face of the exterior wall or glass line (whichever is greater) and including all second floor vertical shafts and penetrations, but excluding outside balconies, arcades and covered entrances.

"Rules and Regulations" are defined in Section 23.1.

"RWQCB" is defined in Section 4.4.

"Scheduled Commencement Date" is defined in Article 1.

"Second Renewal Option" is specified in Section 4.4.

"Second Renewal Term" is defined in Section 4.4.

"Security Deposit" is defined in Article 1.

"Service Yard" is defined in Section 2.3.

"Sublease" is defined in Section 14.1.

"Successor" is defined in Section 16.4.

"Supplemental Investigation" is defined in Section 12.7.

"Tenant" is defined in the introductory paragraph to this Lease.

"Tenant Improvement Work" is defined in Section 9.2.

"Tenant Obligations" are defined in Section 8.2.

"Tenant's Agents" means Tenant's directors, officers, agents, employees, subtenants, licensees and lenders.

"Tenant's Hazardous Materials" are defined in Section 12.1(e).

"Tenant's Property" is defined in Section 9.7.

"Term" is defined in Article 1 and Section 4.1.

"Termination Date" is defined in Section 4.1.

"Transfer" is defined in Section 14.5.

"Transfer Costs" are defined in Section 14.4.

"Transfer Notice" is defined in Section 14.2.

"Transferee" is defined in Section 14.2.

"Transit Fees" are defined in Section 7.7.

"Warranty Period" is defined in Section 8.1.

"Wipe Sample Screening Level" is defined in Section 4.5.

Exhibit A

Authorized Transmitters

Name	Title	Email
Elon Musk	Chief Executive Officer	elon@teslamotors.com
Deepak Ahuja	Chief Financial Officer	deepak@teslamotors.com
Mike Taylor	Vice President of Finance	mike@teslamotors.com
Rex Liu	Controller	rliu@teslamotors.com

TESLA MOTORS, INC.
1050 Bing Street
San Carlos, CA 94070

January 20, 2010

United States Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Re: Davis Bacon Act Letter Agreement

Ladies and Gentlemen:

This letter agreement is being executed by Tesla Motors, Inc. (the "Borrower") and delivered to the United States Department of Energy ("DOE"), in connection with the Loan Arrangement and Reimbursement Agreement (the "Loan Agreement") being entered into, on the date hereof, between the Borrower and DOE. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings ascribed to such terms in the Loan Agreement.

As an inducement to DOE entering into the Loan Agreement, the Borrower hereby agrees to comply fully with the following terms of this letter agreement until the date that all of the Note P Obligations and the Note S Obligations have been paid in full and the Loan Commitment Amounts have been reduced to zero:

(a) General. The Borrower shall insert in any contract for construction, alteration, or repair of a building or work financed in whole or in part by a loan under 42 U.S.C. sec. 17013 the clauses contained in 29 C.F.R. 5.5(a)(1)-(10) (which are set forth in Section (a) of the Attachment hereto). The Borrower shall insert in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act the clauses contained in 29 C.F.R. 5.5(b) (which are set forth in Section (b) of the Attachment hereto).

(b) Retention and Review of Payrolls. The Borrower shall be responsible for systematically reviewing certified payroll records and other evidence of payment of the required wages set forth in the wage determination(s) of the Secretary of Labor ("Davis-Bacon Act wages") for the laborers and mechanics of any contractor or

subcontractor awarded a contract for construction, alteration, or repair of a building or work financed in whole or in part by a loan under 42 U.S.C. sec. 17013. The Borrower shall promptly notify DOE in writing when it receives any complaint related to non-compliance with the Davis-Bacon Act or discovers in the course of its systematic review of the certified payroll records and other evidence of payment of Davis-Bacon Act wages an incident that the Borrower reasonably believes to be a case of such non-compliance and which, in each case, the Borrower cannot resolve on its own. In such a case, the Borrower shall forward to DOE (1) the complaint or a written summary of the non-compliant incident, (2) a summary of the Borrower's investigation into such complaint or such incident, and (3) the relevant certified payroll records and other evidence of payment of Davis-Bacon Act wages. Certified payroll records and other evidence of payment of Davis-Bacon Act wages maintained by the Borrower on DOE's behalf shall be preserved for 3 years after completion of work. Notwithstanding anything to the contrary in subparagraph (a)(3)(ii)(A) of the Attachment hereto, the Borrower, on DOE's behalf, shall maintain such certified payroll records and other evidence of payment of Davis-Bacon Act wages at a site designated by the Borrower and shall make such records available to DOE and the U.S. Department of Labor when necessary, and upon request, for purposes of an investigation or audit of compliance with prevailing wage requirements. Certified payroll records and other evidence of payment of Davis-Bacon Act wages maintained by the Borrower shall be considered federal government records for the purposes of the Freedom of Information Act, 5 U.S.C. § 552. The Borrower shall provide such records to DOE within five (5) business days of receipt of any request for such records from DOE.

(c) Information Required for Wage Determinations. Without limiting the Borrower's obligations under the Loan Agreement or under the Davis-Bacon Act, the Borrower shall provide DOE (i) a detailed written description of the work to be performed by any contractors or subcontractors which will perform construction, alteration, or repair of a building or work financed in whole or in part by a loan under 42 U.S.C. § 17013 and (ii) any other information requested by DOE, for the purpose of enabling DOE to ensure that (x) the appropriate wage determination(s) are incorporated into bid solicitations and contract specifications and (y) the appropriate wage determination(s) are designated specifically to the contract or subcontract work. Any such description or other information requested by DOE for the purpose of this paragraph shall be provided to DOE (i) at least ten (10) Business Days prior to the execution of a contract (or a modification thereto) for construction, alteration or repair of a building or work financed in whole or in part by a loan under 42 U.S.C. § 17013 or (ii) in the case of any such contract entered into pursuant to competitive bidding procedures, at least twenty (20) Business Days prior to the opening of bids.

Very truly yours,

TESLA MOTORS, INC.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer

ACKNOWLEDGED AND AGREED:

U.S. DEPARTMENT OF ENERGY

By: _____
Name: Lachlan W. Seward
Title: Director, Advanced Technology
Vehicles Manufacturing Loan Program

Very truly yours,

TESLA MOTORS, INC.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

U.S. DEPARTMENT OF ENERGY

By: _____
Name: Lachlan W. Seward
Title: Director, Advanced Technology
Vehicles Manufacturing Loan Program

ATTACHMENT

SECTION (a) MINIMUM WAGES, ETC.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4) [paragraph (a)(4) below]. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not

performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Department of Energy ("DOE") shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, DOE may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract

work is performed a copy of all payrolls to the DOE) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to DOE. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DOE if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to DOE, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(ii)(B) Each payroll submitted shall be accompanied by a ``Statement of Compliance,'' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the ``Statement of Compliance'' required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of DOE or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's

registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment

opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as DOE may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of

section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

SECTION (b) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages.

The DOE shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

January 20, 2010

We refer to the Loan Arrangement and Reimbursement Agreement (the "Arrangement Agreement"), dated as of January 20, 2010, between Tesla Motors, Inc., a Delaware corporation (the "Borrower") and the United States Department of Energy. Terms defined in the Arrangement Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to Section 5.1(u) of the Arrangement Agreement, the undersigned, Deepak Ahuja, the Chief Financial Officer of the Borrower, to the best of his knowledge and belief, and in his capacity as an officer of the Borrower and not in his individual capacity, hereby certifies as follows:

1. I am the duly elected Chief Financial Officer of the Borrower;

2. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

TESLA MOTORS, INC.

By: _____

Name: Deepak Ahuja

Title: Chief Financial Officer

[Signature Page to Lobbying Certification]

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
[D] a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
[B] a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
[B] a. initial filing
b. material change
For Material Change Only:
year 2010 quarter 1
date of last report 11/17/08

4. Name and Address of Reporting Entity:
[X] Prime [ ] Subawardee
Tier _____, *If known*:
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
N/A
Congressional District, *if known*:

6. Federal Department/Agency:
Department of Energy

7. Federal Program Name/Description:
Advanced Technology Vehicle Manufacturing Program
CFDA Number, *if applicable*: _____

8. Federal Action Number, *If known*:

9. Award Amount, *If known*:
$ 465,000,000

10. a. Name and Address of Lobbying Entity
(*if individual, last name, first name, MI*):
McBee Strategic
601 Pennyslvania Ave., NW
Suite 800 - North Building
Washington, DC 20004

b. Individuals Performing Services (*including address if different from No. 10a*)
(*last name, first name, MI*):
Angela Becker-Dippman

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):
$ 10,000/mo. [X] actual [ ] planned

12. Form of Payment (*check all that apply*):
[X] a. cash
[ ] b. in-kind; specify: nature _____
value _____

13. Type of Payment (*check all that apply*):
[X] a. retainer
[ ] b. one-time fee
[ ] c. commission
[ ] d. contingent fee
[ ] e. deferred
[ ] f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:
McBee Strategic represents Tesla Motors on a retained basis to undertake ad hoc advocacy primarily directed to members of Congress.

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: [ ] Yes [X] No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: Diarmuid B. O'Connell
Title: Vice President, Business Development
Telephone No.: (415) 990-6771 Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSURANCE ADVISOR CERTIFICATE
(For Closing)

(Delivered pursuant to Section 5.1(p) of the Loan Arrangement and Reimbursement Agreement)

Date of this Certificate: January 20, 2010

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Insurance Advisor Certificate is delivered to you pursuant to Section 5.1(p) of the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "Arrangement Agreement"), by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Insurance Advisor Certificate shall have their respective meanings specified in the Arrangement Agreement.

This Certificate or memorandum of insurance does not affirmatively or negatively amend, extend, or alter the coverage afforded by the insurance policies.

The Insurance Advisor HEREBY CERTIFIES that, as of the date hereof:

1. Pursuant to Section 5.1(p) of the Arrangement Agreement, (i) attached hereto as Exhibit 5.1(p) is a report of the insurance carried by Borrower, and such insurance complies with the requirements under Section 7.4 of the Arrangement Agreement and (ii) the endorsements required by Section 7.4 of the Arrangement Agreement have been obtained.

IN WITNESS WHEREOF, the undersigned has executed this Insurance Advisor Certificate as of the date first written above.

WOODRUFF SAWYER & COMPANY

By: Kathleen Floyd

Name: Kathleen Floyd

Title: V.P. Account Executive

[Signature page to Insurance Advisor Certificate (Closing)]

Exhibit 5.1(p)

Insurance Report

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Commercial Package	Chubb/Federal Insurance Company	01/07/09 to 04/14/10	[redacted]	
Umbrella	Chubb/ Federal Insurance Company	01/07/09 to 04/14/10	[redacted]	

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			SIR: None	
Fiduciary, Crime & Special Contingency	Chubb/Federal Ins. Co.	01/07/09 to 04/14/10	[redacted]	

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Foreign Package	Chubb/Great Northern Insurance Company	01/07/09 to 04/14/10	[redacted]	

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Cargo (Auditable Policy)	Navigators Insurance Company	01/07/09 to 04/14/10	[redacted]	
UK Local Admitted Package	Chubb Ins Co of Europe S E	01/31/09 to 04/14/10	**Property** [redacted]	
Taiwan Local General Liability	Great Northern Insurance Company	01/07/09 to 04/14/10	[redacted]	
Taiwan Local Property	Great Northern Insurance Company	01/07/09 to 04/14/10	[redacted]	
Garage Liability	ACE American Insurance Company	04/14/09 to 04/14/10	[redacted]	

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Workers' Compensation (Auditable Policy)	Zurich - American Guarantee & Liability	05/01/09 to 05/01/10		6 Total Claims Paid: $3,133 Reserve: $3,585.95 Total: 7,718.95
Products Liability ($1,000,000 Primary) (Auditable Policy)	Westchester Surplus Lines Insurance Company	04/14/09 to 04/14/10		
Excess Products and Garage Liability ($20M Excess of $1M) (Auditable Policy)	Lexington Insurance Company	04/14/09 to 04/14/10		
Public Track Testing	Lloyds Syndicate New Line	01/31/09 to 04/14/10		
UK Employers Liability	Travelers	01/31/09 to 04/14/10		
Motor Trade & Motor Fleet	Travelers	01/31/09 to 04/14/10		

Tesla Motors

Summary

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Personal Accident	Chubb	01/31/09 to 04/14/10		
Directors & Officers and Employment Practices Liability	Twin City Fire Ins Co	07/27/09 to 07/27/10		Claims Reported during the 2008-2009 Policy Term 5/29/2009 - Open - D&O Claim Excess carriers XL Specialty and Navigators claim is closed 7/11/2008- Open - Employment Practice Claim
Excess Directors & Officers Liability	XL Specialty Ins Co	07/27/09 to 07/27/10		
Excess Directors & Officers Liability	Liberty Mutual Ins Co	07/27/09 to 07/27/10		

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/03/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: ACE American Insurance Company	22667
INSURER B: Federal Insurance Company	20281
INSURER C: Lexington Insurance Company	19437
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
B		GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER [X] POLICY [ ] PRO-JECT [ ] LOC	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A		GARAGE LIABILITY [X] ANY AUTO	[redacted]	04/14/2009	04/14/2010	AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS MADE [X] DEDUCTIBLE RETENTION $0	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE AGGREGATE	$ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
C		OTHER Excess Garage	[redacted]	04/14/2009	04/14/2010	Limit	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Federal Financing Bank is included as additional insured per form 80 02 2000 04 01 5.

CERTIFICATE HOLDER

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Tom Kelley

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Supplementary Payments (continued)

b. release attachments;

but only for bond amounts within the available Limit Of Insurance. We do not have to furnish these bonds.

C. reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of such claim or **suit**, including actual loss of earnings up to $1000 a day because of time off from work.

D. costs taxed against the **insured** in the **suit**, except any:

1. attorney fees or litigation expenses; or
2. other loss, cost or expense;

in connection with any injunction or other equitable relief.

E. prejudgment interest awarded against the **insured** on that part of a judgment we pay. If we make an offer to pay the applicable Limit Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

F. interest on the full amount of a judgment that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit Of Insurance.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of Insurance.

Coverage Territory

This insurance applies anywhere, provided the **insured**'s responsibility to pay damages, to which this insurance applies, is determined in a **suit** on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we agree.

Who Is An Insured

Sole Proprietorships

If you are an individual, you and your spouse are **insureds**; but you and your spouse are **insureds** only with respect to the conduct of a business of which you are the sole owner.

If you die:

- persons or organizations having proper temporary custody of your property are **insureds**; but they are **insureds** only with respect to the maintenance or use of such property and only for acts until your legal representative has been appointed; and
- your legal representatives are **insureds**; but they are **insureds** only with respect to their duties as your legal representatives. Such legal representatives will assume your rights and duties under this insurance.

Who Is An Insured
(continued)

Partnerships Or Joint Ventures	If you are a partnership (including a limited liability partnership) or a joint venture, you are an**insured**. Your members, your partners and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business.
Limited Liability Companies	If you are a limited liability company, you are an **insured**. Your members and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business. Your managers are **insureds**; but they are **insureds** only with respect to their duties as your managers.
Other Organizations	If you are an organization (including a professional corporation) other than a partner ship, joint venture or limited liability company, you are an **insured**. Your directors and **officers** are **insureds**; but they are **insureds** only with respect to their duties as your directors or **officers**. Your stockholders and their spouses are **insureds**; but they are **insureds** only with respect to their liability as your stockholders.
Employees	Your **employees** are **insureds**; but they are **insureds** only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no **employee** is an **insured** for: A. **bodily injury, advertising injury** or **personal injury**: 1. to you, to any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or to any co-**employee** while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business; 2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or 3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above. With respect to **bodily injury** only, this limitation does not apply to: • you or to your directors, managers, members, **officers**, partners or supervisors as **insureds**; or • your **employees**, as **insureds**, with respect to such damages caused by cardio-pulmonary resuscitation or first aid services administered by such an **employee**; or B. **property damage** to any property owned, occupied or used by you or by any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or by any of your **employees**. This limitation does not apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.

Who Is An Insured
(continued)

Volunteers

Persons who are volunteer workers for you are **insureds**; but they are **insureds** only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your **employees**) or organizations acting as your real estate managers are **insureds**; but they are **insureds** only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to **mobile equipment** registered in your name under a motor vehicle registration law:

A. persons driving such equipment on a public road with your permission are **insureds**; and

B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are **insureds**; but they are **insureds** only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

However, no person or organization is an **insured** with respect to:

- **bodily injury** to any co-**employee** of the person driving the equipment; or
- **property damage** to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an **insured** under this provision.

Vendors

Persons or organizations who are vendors of **your products** are **insureds**; but they are **insureds** only with respect to their liability for damages for **bodily injury** or **property damage** resulting from the distribution or sale of **your products** in the regular course of their business and only if this insurance applies to the **products-completed operations hazard**.

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for **bodily injury** or **property damage** that such vendor would have in the absence of such contract or agreement;
- representation or warranty unauthorized by you;
- physical or chemical change in **your products** made intentionally by the vendor;
- repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container,
- failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of **your products**;
- demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of **your products**; or
- of **your products** which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.

Vendors (continued)

Further, no person or organization from whom you have acquired **your products**, or any container, ingredient or part entering into, accompanying or containing **your products**, is an **insured** under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are **insureds**; but they are **insureds** only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence; or
- **occurrence** that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are **insureds**; but they are **insureds** only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence;
- **occurrence** that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named **insureds**:

- a subsidiary organization of the first named **insured** shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named **insured** shown in the Declarations that such first named **insured** acquires or forms during the policy period, if at the time of loss such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an **insured** with respect to the conduct of any person or organization that is not shown as a named **insured** in the Declarations.

B. No person or organization is an **insured** with respect to the:

1. ownership, maintenance or use of any assets; or
2. conduct of any person or organization whose assets, business or organization;

Who Is An Insured

Limitations On Who Is An Insured (continued)

you acquire, either directly or indirectly, for any:

- **bodily injury** or **property damage** that occurred; or
- **advertising injury** or **personal injury** arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, aquired such assets, business or organization.

Limits Of Insurance

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- **insureds**;
- claims made or **suits** brought; or
- persons or organizations making claims or bringing **suits**.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**, except damages included in the **products-completed operations hazard**; and
- **medical expenses**.

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for **bodily injury** and **property damage** included in the **products-completed operations hazard**.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for **advertising injury** and **personal injury**.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**; and
- **medical expenses**;

arising out of any one **occurrence**.

Any amount paid for damages or **medical expenses** will reduce the amount of the applicable aggregate limit available for any other payment.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/18/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: ACE American Insurance Company	22667
INSURER B: Federal Insurance Company	20281
INSURER C: Lexington Insurance Company	19437
INSURER D:	
INSURER E.	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
B		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A		GARAGE LIABILITY X ANY AUTO	[redacted]	04/14/2009	04/14/2010	AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE X DEDUCTIBLE RETENTION $0	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE AGGREGATE	$ $ $ $ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
C		OTHER Excess Garage	[redacted]	04/14/2009	04/14/2010	Limit	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Midland Loan Services, Inc. is included as additional insured per form 80 02 2000 04 01 5 and as a loss payee as their interests may appear.

CERTIFICATE HOLDER

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Tom Kelsey

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Supplementary Payments
(continued)

b. release attachments;

but only for bond amounts within the available Limit Of Insurance. We do not have to furnish these bonds.

C. reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of such claim or **suit**, including actual loss of earnings up to $1000 a day because of time off from work.

D. costs taxed against the **insured** in the **suit**, except any:

1. attorney fees or litigation expenses; or

2. other loss, cost or expense;

in connection with any injunction or other equitable relief.

E. prejudgment interest awarded against the **insured** on that part of a judgment we pay. If we make an offer to pay the applicable Limit Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

F. interest on the full amount of a judgment that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit Of Insurance.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of Insurance.

Coverage Territory

This insurance applies anywhere, provided the **insured**'s responsibility to pay damages, to which this insurance applies, is determined in a **suit** on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we agree.

Who Is An Insured

Sole Proprietorships

If you are an individual, you and your spouse are **insureds**; but you and your spouse are **insureds** only with respect to the conduct of a business of which you are the sole owner.

If you die:

- persons or organizations having proper temporary custody of your property are **insureds**; but they are **insureds** only with respect to the maintenance or use of such property and only for acts until your legal representative has been appointed; and
- your legal representatives are **insureds**; but they are **insureds** only with respect to their duties as your legal representatives. Such legal representatives will assume your rights and duties under this insurance.

Partnerships Or Joint Ventures

If you are a partnership (including a limited liability partnership) or a joint venture, you are an**insured**. Your members, your partners and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business.

Limited Liability Companies

If you are a limited liability company, you are an **insured**. Your members and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business. Your managers are **insureds**; but they are **insureds** only with respect to their duties as your managers.

Other Organizations

If you are an organization (including a professional corporation) other than a partner ship, joint venture or limited liability company, you are an **insured**. Your directors and **officers** are **insureds**; but they are **insureds** only with respect to their duties as your directors or **officers**. Your stockholders and their spouses are **insureds**; but they are **insureds** only with respect to their liability as your stockholders.

Employees

Your **employees** are **insureds**; but they are **insureds** only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, no **employee** is an **insured** for:

A. **bodily injury**, **advertising injury** or **personal injury**:

1. to you, to any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or to any co-**employee** while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;
2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or
3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above.

With respect to **bodily injury** only, this limitation does not apply to:

- you or to your directors, managers, members, **officers**, partners or supervisors as **insureds**; or
- your **employees**, as **insureds**, with respect to such damages caused by cardio-pulmonary resuscitation or first aid services administered by such an **employee**; or

B. **property damage** to any property owned, occupied or used by you or by any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or by any of your **employees**.

This limitation does not apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.

Who Is An Insured
(continued)

Volunteers

Persons who are volunteer workers for you are **insureds**; but they are **insureds** only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your **employees**) or organizations acting as your real estate managers are **insureds**; but they are **insureds** only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to **mobile equipment** registered in your name under a motor vehicle registration law:

A. persons driving such equipment on a public road with your permission are **insureds**; and

B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are **insureds**; but they are **insureds** only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

However, no person or organization is an **insured** with respect to:

- **bodily injury** to any co-**employee** of the person driving the equipment; or
- **property damage** to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an **insured** under this provision.

Vendors

Persons or organizations who are vendors of **your products** are **insureds**; but they are **insureds** only with respect to their liability for damages for **bodily injury** or **property damage** resulting from the distribution or sale of **your products** in the regular course of their business and only if this insurance applies to the **products-completed operations hazard.**

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for **bodily injury** or **property damage** that such vendor would have in the absence of such contract or agreement;
- representation or warranty unauthorized by you;
- physical or chemical change in **your products** made intentionally by the vendor;
- repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container;
- failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of **your products**;
- demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of **your products**; or
- of **your products** which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.

Vendors (continued)

Further, no person or organization from whom you have acquired **your products**, or any container, ingredient or part entering into, accompanying or containing **your products**, is an **insured** under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are **insureds**; but they are **insureds** only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence; or
- **occurrence** that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are **insureds**; but they are **insureds** only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence;
- **occurrence** that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named **insureds**:

- a subsidiary organization of the first named **insured** shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named **insured** shown in the Declarations that such first named **insured** acquires or forms during the policy period, if at the time of loss such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an **insured** with respect to the conduct of any person or organization that is not shown as a named **insured** in the Declarations.

B. No person or organization is an **insured** with respect to the:

1. ownership, maintenance or use of any assets; or
2. conduct of any person or organization whose assets, business or organization;

Who Is An Insured

Limitations On Who Is An Insured (continued)

you acquire, either directly or indirectly, for any:

- **bodily injury** or **property damage** that occurred; or
- **advertising injury** or **personal injury** arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, aquired such assets, business or organization.

Limits Of Insurance

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- **insureds**;
- claims made or **suits** brought; or
- persons or organizations making claims or bringing **suits**.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**, except damages included in the **products-completed operations hazard**; and
- **medical expenses**.

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for **bodily injury** and **property damage** included in the **products-completed operations hazard**.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for **advertising injury** and **personal injury**.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**; and
- **medical expenses**;

arising out of any one **occurrence**.

Any amount paid for damages or **medical expenses** will reduce the amount of the applicable aggregate limit available for any other payment.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/03/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: ACE American Insurance Company	22667
INSURER B: Federal Insurance Company	20281
INSURER C: Lexington Insurance Company	19437
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
B		GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER [X] POLICY [ ] PRO-JECT [ ] LOC	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A		GARAGE LIABILITY [X] ANY AUTO	[redacted]	04/14/2009	04/14/2010	AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS MADE [X] DEDUCTIBLE [ ] RETENTION $0	[redacted]	01/07/2009	04/14/2010	EACH OCCURRENCE AGGREGATE	$ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
C		OTHER Excess Garage	[redacted]	04/14/2009	04/14/2010	Limit	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
The United States Department of Energy is included as additional insured per form 80 02 2000 04 01 5.

CERTIFICATE HOLDER

United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Tom Kelsey

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Supplementary Payments (continued)

b. release attachments;

but only for bond amounts within the available Limit Of Insurance. We do not have to furnish these bonds.

C. reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of such claim or **suit**, including actual loss of earnings up to $1000 a day because of time off from work.

D. costs taxed against the **insured** in the **suit**, except any:

1. attorney fees or litigation expenses; or
2. other loss, cost or expense;

in connection with any injunction or other equitable relief.

E. prejudgment interest awarded against the **insured** on that part of a judgment we pay. If we make an offer to pay the applicable Limit Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

F. interest on the full amount of a judgment that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit Of Insurance.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of Insurance.

Coverage Territory

This insurance applies anywhere, provided the **insured**'s responsibility to pay damages, to which this insurance applies, is determined in a **suit** on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we agree.

Who Is An Insured

Sole Proprietorships

If you are an individual, you and your spouse are **insureds**; but you and your spouse are **insureds** only with respect to the conduct of a business of which you are the sole owner.

If you die:

- persons or organizations having proper temporary custody of your property are **insureds**; but they are **insureds** only with respect to the maintenance or use of such property and only for acts until your legal representative has been appointed; and
- your legal representatives are **insureds**; but they are **insureds** only with respect to their duties as your legal representatives. Such legal representatives will assume your rights and duties under this insurance.

Who Is An Insured
(continued)

Partnerships Or Joint Ventures	If you are a partnership (including a limited liability partnership) or a joint venture, you are an**insured**. Your members, your partners and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business.
Limited Liability Companies	If you are a limited liability company, you are an **insured**. Your members and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business. Your managers are **insureds**; but they are **insureds** only with respect to their duties as your managers.
Other Organizations	If you are an organization (including a professional corporation) other than a partner ship, joint venture or limited liability company, you are an **insured**. Your directors and **officers** are **insureds**; but they are **insureds** only with respect to their duties as your directors or **officers**. Your stockholders and their spouses are **insureds**; but they are **insureds** only with respect to their liability as your stockholders.
Employees	Your **employees** are **insureds**; but they are **insureds** only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no **employee** is an **insured** for: A. **bodily injury**, **advertising injury** or **personal injury**: 1. to you, to any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or to any co-**employee** while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business; 2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or 3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above. With respect to **bodily injury** only, this limitation does not apply to: • you or to your directors, managers, members, **officers**, partners or supervisors as **insureds**; or • your **employees**, as **insureds**, with respect to such damages caused by cardio-pulmonary resuscitation or first aid services administered by such an **employee**; or B. **property damage** to any property owned, occupied or used by you or by any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or by any of your **employees**. This limitation does not apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.

Who Is An Insured
(continued)

Volunteers

Persons who are volunteer workers for you are **insureds**; but they are **insureds** only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your **employees**) or organizations acting as your real estate managers are **insureds**; but they are **insureds** only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to **mobile equipment** registered in your name under a motor vehicle registration law:

A. persons driving such equipment on a public road with your permission are **insureds**; and

B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are **insureds**; but they are **insureds** only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

However, no person or organization is an **insured** with respect to:

- **bodily injury** to any co-**employee** of the person driving the equipment; or
- **property damage** to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an **insured** under this provision.

Vendors

Persons or organizations who are vendors of **your products** are **insureds**; but they are **insureds** only with respect to their liability for damages for **bodily injury** or **property damage** resulting from the distribution or sale of **your products** in the regular course of their business and only if this insurance applies to the **products-completed operations hazard**.

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for **bodily injury** or **property damage** that such vendor would have in the absence of such contract or agreement;
- representation or warranty unauthorized by you;
- physical or chemical change in **your products** made intentionally by the vendor;
- repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container;
- failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of **your products**;
- demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of **your products**; or
- of **your products** which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.

Vendors (continued)

Further, no person or organization from whom you have acquired **your products**, or any container, ingredient or part entering into, accompanying or containing **your products**, is an **insured** under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are **insureds**; but they are **insureds** only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence; or
- **occurrence** that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are **insureds**; but they are **insureds** only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an **insured** with respect to any:

- damages arising out of their sole negligence;
- **occurrence** that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named **insureds**:

- a subsidiary organization of the first named **insured** shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named **insured** shown in the Declarations that such first named **insured** acquires or forms during the policy period, if at the time of loss such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an **insured** with respect to the conduct of any person or organization that is not shown as a named **insured** in the Declarations.

B. No person or organization is an **insured** with respect to the:

1. ownership, maintenance or use of any assets; or
2. conduct of any person or organization whose assets, business or organization;

Who Is An Insured

Limitations On Who Is An Insured (continued)

you acquire, either directly or indirectly, for any:

- **bodily injury** or **property damage** that occurred; or
- **advertising injury** or **personal injury** arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, aquired such assets, business or organization.

Limits Of Insurance

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- **insureds**;
- claims made or **suits** brought; or
- persons or organizations making claims or bringing **suits**.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**, except damages included in the **products-completed operations hazard**; and
- **medical expenses**.

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for **bodily injury** and **property damage** included in the **products-completed operations hazard**.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for **advertising injury** and **personal injury**.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

- damages for **bodily injury** and **property damage**; and
- **medical expenses**;

arising out of any one **occurrence**.

Any amount paid for damages or **medical expenses** will reduce the amount of the applicable aggregate limit available for any other payment.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/03/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: American Guarantee and Liability Insurance	C 26247
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO					
		☐ ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		☐ SCHEDULED AUTOS					
		☐ HIRED AUTOS				BODILY INJURY (Per accident)	$
		☐ NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[redacted]	05/01/2009	05/01/2010	X WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					$
							$
							$

[redacted]

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Issued for Evidence of Insurance Purposes Only

CERTIFICATE HOLDER

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: Tom Kelsey

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/18/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: American Guarantee and Liability Insurance	C 26247
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY				
		COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE $
		CLAIMS MADE / OCCUR				DAMAGE TO RENTED PREMISES (Ea occurence) $
						MED EXP (Any one person) $
						PERSONAL & ADV INJURY $
						GENERAL AGGREGATE $
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG $
		POLICY / PRO-JECT / LOC				
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) $
		ANY AUTO				
		ALL OWNED AUTOS				BODILY INJURY (Per person) $
		SCHEDULED AUTOS				
		HIRED AUTOS				BODILY INJURY (Per accident) $
		NON-OWNED AUTOS				
						PROPERTY DAMAGE (Per accident) $
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT $
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC $
						AGG $
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE $
		OCCUR / CLAIMS MADE				AGGREGATE $
						$
		DEDUCTIBLE				$
		RETENTION $				$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[redacted]	05/01/2009	05/01/2010	X WC STATU-TORY LIMITS / OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT $
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE $
						E.L. DISEASE - POLICY LIMIT $
		OTHER				$
						$
						$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Issued for Evidence of Insurance Purposes Only

CERTIFICATE HOLDER

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Tom Kelsey

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/03/2009

PRODUCER
Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A American Guarantee and Liability Insurance	C 26247
INSURER B	
INSURER C	
INSURER D	
INSURER E	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurence)	$
		CLAIMS MADE OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER				PRODUCTS - COMP/OP AGG	$
		POLICY PRO-JECT LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO					
		ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		SCHEDULED AUTOS					
		HIRED AUTOS				BODILY INJURY (Per accident)	$
		NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR CLAIMS MADE				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[redacted]	05/01/2009	05/01/2010	X WC STATU-TORY LIMITS OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					$
							$
							$

[redacted]

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Issued for Evidence of Insurance Purposes Only

CERTIFICATE HOLDER

United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

LOAN #:

CANCELLATION 10 Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Tom Kelley

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD.

DATE (MM/DD/YY)
12/03/2009

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER | PHONE (A/C, No, Ext):

Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

CODE: | SUB CODE:
AGENCY CUSTOMER ID #: Tom Kelsey

COMPANY
Federal Insurance Company

INSURED
Tesla Motors, Inc.

One Circle Star Way,
4th Floor
San Carlos, CA 94070

LOAN NUMBER	POLICY NUMBER [redacted]

EFFECTIVE DATE	EXPIRATION DATE	☐ CONTINUED UNTIL TERMINATED IF CHECKED
01/07/2009	04/14/2010	

THIS REPLACES PRIOR EVIDENCE DATED:

LOCATION/DESCRIPTION
Issued for Evidence of Insurance Purposes Only

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Business Personal Property Business Income -Replacement Cost -Special Form -Includes Theft -Includes Tenant Improvements & Betterments	[redacted]	

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 30 DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

NAME AND ADDRESS
Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

☐ MORTGAGEE ☐ ADDITIONAL INSURED
☐ LOSS PAYEE

LOAN #
ID #:

AUTHORIZED REPRESENTATIVE Tom Kelsey

ACORD EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YY): 12/18/2009

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER | PHONE (A/C, No, Ext):

Woodruff-Sawyer & Co.
220 Bush St., 7th Floor
San Francisco CA 94104
(415) 391-2141

CODE: | SUB CODE:
AGENCY CUSTOMER ID #: Tom Kelsey

COMPANY: Federal Insurance Company

INSURED
Tesla Motors, Inc.

One Circle Star Way,
4th Floor
San Carlos, CA 94070

LOAN NUMBER | POLICY NUMBER [redacted]

EFFECTIVE DATE: 01/07/2009 | EXPIRATION DATE: 04/14/2010 | CONTINUED UNTIL TERMINATED IF CHECKED

THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION

LOCATION/DESCRIPTION

Midland Loan Services, Inc. will be included as a loss payee as their interests may appear.

COVERAGE INFORMATION

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Business Personal Property Business Income -Replacement Cost -Special Form -Includes Theft -Includes Tenant Improvements & Betterments	[redacted]	

REMARKS (Including Special Conditions)

CANCELLATION 10 Day Notice for Non-Payment of Premium

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 30 DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

ADDITIONAL INTEREST

NAME AND ADDRESS

Midland Loan Services, Inc.
10851 Mastin, Suite 700
Overland Park, KS 66210

[ ] MORTGAGEE
[X] LOSS PAYEE
[ ] ADDITIONAL INSURED

LOAN #
ID #:

AUTHORIZED REPRESENTATIVE Tom Kelsey

ACORD 27 (3/93)

ACORD.

DATE (MM/DD/YY)
12/03/2009

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER	PHONE (A/C, No, Ext):	COMPANY
Woodruff-Sawyer & Co. 220 Bush St., 7th Floor San Francisco CA 94104 (415) 391-2141		Federal Insurance Company
CODE:	SUB CODE:	
AGENCY CUSTOMER ID #:	Tom Kelsey	

INSURED	LOAN NUMBER	POLICY NUMBER [redacted]
Tesla Motors, Inc. One Circle Star Way, 4th Floor San Carlos, GA 94070	EFFECTIVE DATE: 01/07/2009	EXPIRATION DATE: 04/14/2010
	CONTINUED UNTIL TERMINATED IF CHECKED: ☐	
	THIS REPLACES PRIOR EVIDENCE DATED:	

LOCATION/DESCRIPTION

Issued for Evidence of Insurance Purposes Only

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Business Personal Property Business Income -Replacement Cost -Special Form -Includes Theft -Includes Tenant Improvements & Betterments	[redacted]	

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 30 DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

NAME AND ADDRESS

United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

☐ MORTGAGEE ☐ ADDITIONAL INSURED
☐ LOSS PAYEE

LOAN #

ID #

AUTHORIZED REPRESENTATIVE Tom Kelsey

TESLA MOTORS, INC.

SECRETARY'S CERTIFICATE

The undersigned, being the duly elected, qualified and acting Assistant Secretary of Tesla Motors, Inc., a Delaware corporation (the "Company"), does hereby certify, as of January 20, 2010, pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of the date hereof (the "Arrangement Agreement"), by and between the Company and the United States Department of Energy, an agency of the United States of America, that:

1. Attached hereto as Exhibit A is a true and complete copy of the Sixth Amended and Restated Certificate of Incorporation, including all amendments thereto, of the Company, certified by the Secretary of State of the State of Delaware;

2. Attached hereto as Exhibit B is a true and complete copy of the Bylaws of the Company, as in effect on and as of the date hereof;

3. Attached hereto as Exhibit C is a true and complete copy of the resolutions adopted by the Company's Board of Directors relating to the authorization, execution, delivery and performance of the Arrangement Agreement and the Warrant and the documents related thereto, and such resolutions have not been amended, annulled, rescinded or revoked and remain in full force and effect;

4. Attached hereto as Exhibit D is a true and complete copy of the resolutions adopted by the Company's stockholders relating to the Warrant and the documents related thereto, and such resolutions have not been amended, annulled, rescinded or revoked and remain in full force and effect;

5. Attached hereto as Exhibit E-1, Exhibit E-2, Exhibit E-3, Exhibit E-4, Exhibit E-5, Exhibit E-6 and Exhibit E-7, respectively, are (i) a certificate of the Secretary of State of the State of Delaware, dated January 15, 2010, with respect to the standing of the Company as a corporation incorporated under the laws of the State of Delaware; (ii) a certificate of the Secretary of State of the State of California, dated January 4, 2010, with respect to the standing of the Company as a foreign corporation qualified to do business in the State of California; (iii) a certificate of the Secretary of State of the State of Colorado, dated January 6, 2010, with respect to the standing of the Company as a foreign corporation qualified to do business in the State of Colorado; (iv) a certificate of the Secretary of State of the State of Florida, dated January 6, 2010, with respect to the standing of the Company as foreign corporation qualified to do business in the State of Florida; (v) a certificate of the Secretary of State of the State of Illinois, dated January 6, 2010, with respect to the standing of the Company as a foreign corporation qualified to do business in the State of Illinois; (vi) a

certificate of the Secretary of State of the State of New York, dated January 6, 2010, with respect to the standing of the Company as a foreign corporation qualified to do business in the State of New York; and (vii) a certificate of the Secretary of State of the State of Washington, dated January 8, 2010, with respect to the standing of the Company as a foreign corporation qualified to do business in the State of Washington.

6. The persons listed on Exhibit F hereto are on and as of the date hereof, duly elected officers of the Company holding the office(s) set opposite their respective names, and the signatures set opposite their respective names are the true signatures of said officers.

7. The person listed on Exhibit G hereto is on and as of the date hereof, a duly elected manager of Tesla Motors S.A.R.L., a subsidiary of the Company, holding the office set opposite his name and the signature set opposite his name is the true signature of said manager.

All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Arrangement Agreement.

***CONFIDENTIAL** - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first written above.

By:_____
Name: Craig Harding
Title: Assistant Secretary

The undersigned, being the Chief Financial Officer of the Company, hereby certifies that Craig Harding is the duly elected, qualified and acting Assistant Secretary of the Company and that the above signature is his genuine signature.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first written above.

By:_____
Name: Deepak Ahuja
Title: Chief Financial Officer

Exhibit A

Certificate of Incorporation

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "TESLA MOTORS, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, FILED THE THIRTY-FIRST DAY OF AUGUST, A.D. 2009, AT 6:39 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-THIRD DAY OF OCTOBER, A.D. 2009, AT 5:47 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF DECEMBER, A.D. 2009, AT 12:42 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE FIFTEENTH DAY OF JANUARY, A.D. 2010, AT 1:20 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3677166 8100X

AUTHENTICATION: 7761520

100044239

DATE: 01-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:39 PM 08/31/2009
FILED 06:39 PM 08/31/2009
SRV 090823249 - 3677166 FILE

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TESLA MOTORS, INC.

The undersigned, Elon Musk and Craig W. Harding, hereby certify that:

1. They are, respectively, the duly elected Chief Executive Officer and Secretary of Tesla Motors, Inc., a Delaware corporation.

2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on July 1, 2003.

3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is Tesla Motors, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 615 South DuPont Highway, City of Dover, County of Kent, State of Delaware 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock designated, respectively, as "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is four hundred eighty-three million six thousand seventy-seven (483,006,077) shares, each with a par value of $0.001 per share. Two hundred seventy million (270,000,000) shares shall be Common Stock and two hundred thirteen million six thousand seventy-seven (213,006,077) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Sixth Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series the rights and preferences of each series as may be designated

from time to time pursuant to an amendment to this Certificate of Incorporation in compliance with Section 6 of this Article IV(B). The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of seven million two hundred thirteen thousand (7,213,000) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of seventeen million four hundred fifty-nine thousand four hundred fifty-six (17,459,456) shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of thirty-five million eight hundred ninety-three thousand one hundred seventy-two (35,893,172) shares. The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of eighteen million four hundred forty thousand four hundred forty-nine (18,440,449) shares. The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of one hundred four million (104,000,000) shares. The sixth series of Preferred Stock shall be designated "Series F Preferred Stock" and shall consist of thirty million (30,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.**

(a) Holders of Series F Preferred Stock, in preference to the holders of any other stock of the Corporation (any such other stock, "Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series F Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series F Preferred Stock shall be $2.9692 per share. "Original Issue Date" shall mean the date on which a share of Series F Preferred Stock was first issued. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) So long as any shares of Series F Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares from an employee or consultant of the Corporation upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series F Preferred Stock shall have been paid or declared and set apart. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock (so long as the provisions of Section 4(d)(ii) of this Article IV(B) apply to such dividend) or (ii) any repurchase of any outstanding securities of the Corporation that is unanimously approved by all members of the Corporation's Board of Directors. The holders of the Series F Preferred Stock expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to repurchase of shares upon termination of employment.

(c) After the payment of such dividends to the holders of the Series F Preferred Stock, holders of Series E Preferred Stock, in preference to the holders of any other remaining stock of the Corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series E Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series E Preferred Stock shall be $2.5124 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(d) So long as any shares of Series E Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any other remaining stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements with employees or consultants of the Corporation which permit the Corporation to repurchase such shares from an employee or consultant of the Corporation upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(c) above) on the Series E Preferred Stock shall have been paid or declared and set apart. The provisions of this Section 1(d) shall not, however, apply to (i) a dividend payable in Common Stock (so long as the provisions of Section 4(d)(ii) of this Article IV(B) apply to such dividend) or (ii) any repurchase of any outstanding securities of the Corporation that is unanimously approved by all members of the Corporation's Board of Directors. The holders of the Series E Preferred Stock expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to repurchase of shares upon termination of employment.

(e) After the payment of such dividends to the holders of the Series F Preferred Stock and the holders of the Series E Preferred Stock, holders of Series D Preferred Stock, in preference to the holders of any other remaining stock of the Corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series D Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series D Preferred Stock shall be $2.4403 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(f) After the payment of such dividends to the holders of Series F Preferred Stock, the holders of Series E Preferred Stock and the holders of Series D Preferred Stock, holders of Series C Preferred Stock, in preference to the holders of any other remaining stock of the Corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of

six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series C Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series C Preferred Stock shall be $1.135 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(g) After the payment of such dividends to the holders of Series F Preferred Stock, the holders of Series E Preferred Stock, the holders of Series D Preferred Stock and the holders of Series C Preferred Stock, holders of Series B Preferred Stock in preference to the holders of any other remaining stock of the Corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series B Preferred Stock shall be $0.74 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(h) After the payment of such dividends to the holders of Series F Preferred Stock, the holders of Series E Preferred Stock, holders of Series D Preferred Stock, holders of Series C Preferred Stock and holders of Series B Preferred Stock, holders of Series A Preferred Stock in preference to the holders of any other remaining stock of the Corporation, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "Original Issue Price" per annum on each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Original Issue Price of the Series B Preferred Stock shall be $0.493 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(i) After all dividends on each outstanding share of Preferred Stock as provided above have been paid or declared and set apart for payment, holders of the then outstanding Common Stock will be entitled to receive in cash dividends, when and if declared by the Board out of the funds legally available therefor.

2. **Liquidation.**

(a) **Preference.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series F Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of any Junior Stock, by reason of their ownership thereof, an amount per share equal to $2.9692 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series F Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus

distributed among the holders of the Series F Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series F Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) After the full payment of the Series F Preferred Stock liquidation preference described in Section 2(a)(i) of this Article IV(B), the holders of the Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Series D Preferred Stock, holders of the Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to $2.5124 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series E Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series E Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series E Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iii) After the full payment of the Series F Preferred Stock liquidation preference and the Series E Preferred Stock liquidation preference described in Sections 2(a)(i) and 2(a)(ii) of this Article IV(B), the holders of the Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of the Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to $2.4403 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series D Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iv) After the full payment of the Series F Preferred Stock liquidation preference, the Series E Preferred Stock liquidation preference, and the Series D Preferred Stock liquidation preference described in Sections 2(a)(i), 2(a)(ii) and 2(a)(iii) of this Article IV(B), the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Series B Preferred Stock, Series A Preferred Stock or Common Stock, by reason of their ownership thereof, an amount per share equal to $1.135 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient

to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(v) After the full payment of the Series F Preferred Stock liquidation preference, the Series E Preferred Stock liquidation preference, the Series D Preferred Stock liquidation preference and the Series C Preferred Stock liquidation preference described in Sections 2(a)(i), 2(a)(ii), 2(a)(iii), and 2(a)(iv) of this Article IV(B), the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of any Series A Preferred Stock or the holders of any Common Stock by reason of their ownership thereof, an amount per share equal to $0.74 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series B Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(vi) After the full payment of the Series F Preferred Stock liquidation preference, the Series E Preferred Stock liquidation preference, the Series D Preferred Stock liquidation preference, the Series C Preferred Stock liquidation preference and the Series B Preferred Stock liquidation preference described in Sections 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), and 2(a)(v) of this Article IV(B), the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of any Common Stock by reason of their ownership thereof, an amount per share equal to $0.493 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(vii) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, under Section 2(a) of this Article IV(B), the amount of assets and funds of the Corporation available for distribution shall be computed in a manner consistent with Section 2(c)(ii) of this Article IV(B).

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) of this Article IV(B) and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, if assets

remain in the Corporation, the holders of the Common Stock of the Corporation shall ratably receive all of the remaining assets of the Corporation.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2 of Article IV(B), a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur if the Corporation shall, directly or indirectly, in one or a series of related transactions, sell, convey, or otherwise dispose of all or substantially all of its property or business or merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation) or effect any other transaction in which fifty percent (50%) or more of the voting power of the Corporation is disposed of or converted into securities of another corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation), provided that this Section 2(c)(i) of Article IV(B) shall not apply to (A) a merger effected exclusively for the purpose of changing the domicile of the Corporation or (B) a transaction in which the stockholders of the Corporation immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction (provided that the stockholders of the Corporation immediately prior to such transaction continue to hold at least 50% of the voting power of the surviving corporation in substantially the same proportions immediately after such transaction).

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) of this Article IV(B), if the consideration received, or to be received, by the Corporation or its stockholders is other than cash, such consideration shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a national securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty trading-day period ending one (1) day prior to the date of the consummation of the transaction deemed a liquidation (or liquidation, dissolution or winding up, as applicable);

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty trading-day period ending one (1) day prior to the date of the consummation of the transaction deemed a liquidation (or liquidation, dissolution or winding up, as applicable); and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Corporation and the holders of at least two-thirds of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) of this Article IV(B) to reflect the approximate fair market value thereof, as mutually determined in good faith by the Corporation and the holders of at least two-thirds of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(C) Any other non-cash consideration shall be valued at its fair market value, as mutually determined in good faith by the Board of Directors and the holders of at least two-thirds of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) not later than the earlier of (x) ten (10) days prior to the stockholders' meeting called to approve such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) and (y) ten (10) days prior to the consummation of such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up), and shall thereafter promptly notify such holders in writing of any stockholder approval of such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up). The first of such notices shall describe the material terms and conditions of the impending liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) and the provisions of this Section 2 of Article IV(B), and shall include a copy of all definitive agreements relating to such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) (including all schedules and exhibits thereto), and the Corporation shall thereafter give such holders prompt notice of any material changes to such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) or agreement (including a copy of such agreements). The liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least two-thirds of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis); provided further, however, that notwithstanding the foregoing, prior to the consummation of any such liquidation, dissolution or winding up, the holders of Preferred Stock shall be given notice thereof.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) of Article IV(B) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and

privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) of this Article IV(B).

3. **Redemption.** The Preferred Stock is not redeemable at the option of the holders thereof or at the option of the Corporation.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(c) of this Article IV(B), each share of Preferred Stock shall be convertible, at the option of the holder thereof and without the payment of additional consideration, at any time and from time to time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Preferred Stock shall be equal to the applicable Original Issue Price of the Preferred Stock; provided, however, that the Conversion Price per share of Series C Preferred Stock shall be $1.0809128. Such Conversion Prices shall be subject to adjustment as set forth in Section 4(d) of this Article IV(B). The holder of such shares of Preferred Stock may convert such stock in whole or in part.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock in accordance with Section 4(a) of this Article IV(B) immediately upon the earlier of (i) except as provided below in Section 4(c) of this Article IV(B), the closing of the sale by the Corporation of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in which (A) the pre-public offering market capitalization of the Corporation is at least $250,000,000 (as determined by multiplying the number of all shares outstanding common stock of the Corporation immediately prior to the public offering (on an as-converted basis) by the price per share offered to the public as of the closing of the public offering) and (B) which results in aggregate cash proceeds to the Corporation of not less than $50,000,000 (net of underwriting discounts and commissions) or (ii) the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis).

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to receive shares of Common Stock upon conversion of Preferred Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such

holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the holder of such Preferred Stock (and, if a different person(s), the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock) shall not be deemed to have converted such Preferred Stock (or received the shares of Common Stock issuable upon such conversion) until immediately prior to the closing of such sale of securities. Upon surrender of certificates of Preferred Stock to be converted in part, the Corporation shall issue to the holder of such Preferred Stock a balance certificate representing the number of full shares of Preferred Stock not so converted.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue or sell, after the date of the filing of the Sixth Amended and Restated Certificate of Incorporation (the "Filing Date"), any Additional Stock (as defined below) without consideration or for per share consideration less than the Conversion Price for any series in effect immediately prior to the issuance or sale of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance or sale shall automatically be adjusted as set forth in this Section 4(d)(i) of Article IV(B), unless otherwise provided in this Section 4(d)(i) of Article IV(B).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section (4)(d)(i) of Article IV(B), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock (on an as converted basis). For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) of this Article IV(B)

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E) of this Article IV(B)) by the Corporation after the Original Issue Date) other than

(1) shares of Common Stock (or options therefor) issued to employees, consultants, directors or other service providers pursuant to plans, agreements or arrangements approved by the Board of Directors;

(2) shares of Common Stock issued in connection with or after consummation of a firm commitment underwritten public offering by the Corporation of shares of its Common Stock pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended, in which the pre-public offering market capitalization of the Corporation is at least $250,000,000 (as determined by multiplying all outstanding common stock of the Corporation immediately prior to the public offering (on an as converted basis) by the price per share offered to the public as of the closing of the public offering) and which results in aggregate cash proceeds to the Corporation of $50,000,000 (net of underwriting discounts and commissions);

(3) securities issued pursuant to the conversion or exercise of convertible or exercisable securities;

(4) securities issues pursuant to stock splits, stock dividends or like transactions (provided that this clause (4) shall in no event affect Sections 4(d)(ii) or 4(d)(iii) of this Article IV(B)); and

(5) securities issued that, with unanimous approval of the Board of Directors of the Corporation, are not offered to any existing stockholder of the Corporation.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for each series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Any adjustment to the Conversion Price carried forward and not theretofore made shall be made immediately prior to the conversion of any shares of Preferred Stock.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors in good faith irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Filing Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i) of Article IV(B):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D) of Article IV(B)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D) of Article IV(B)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each

series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) of this Article IV(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4) of this Article IV(B).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section (4)(d)(i) of this Article IV(B). except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4) of this Article IV(B), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) of Article IV(B) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock, or combination or reclassification, or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split, subdivision, combination or reclassification if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E) of this Article IV(B).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination, consolidation or reclassification of the outstanding shares of Common Stock, then, as of such record date (or the date of such combination, consolidation or reclassification if no record date is fixed), the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be

decreased in proportion to such decrease of the aggregate of shares of Common Stock outstanding.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii) of this Article IV(B), then, in each such case for the purpose of this Section 4(e) of Article IV(B), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 of Article IV(B) or Section 2 of this Article IV(B)), then provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 of Article IV(B) with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 of Article IV(B) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share (in lieu of any fractional share to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the date of conversion as determined in good faith by the Board of Directors). The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of each series of Preferred Stock pursuant to this Section 4 of Article IV(B), the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request

at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Preferred Stock.

(h) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of all series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of all series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Sixth Amended and Restated Certificate of Incorporation.

(j) **Notices.** Any notice or certificate required by the provisions of this Section 4 of Article IV(B) to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation; provided, however that if the Corporation and any such holder (or assignor or transferor to such holder) have agreed to a manner of giving notices in the agreement pursuant to which the Corporation has sold to such holder (or assignor or transferor to such holder) the Preferred Stock, then such contractual notice provision shall instead apply to the Corporation with respect to giving notices or certificates to such holder (or assignees or transferees of such holder) under this Section 4 of Article IV(B).

5. **Voting Rights.**

(a) Except as otherwise expressly provided herein or by law, the holder of each share of Preferred Stock shall have the right, in person or by proxy, to one vote for each share of Common Stock into which such Preferred Stock could then be converted in accordance with Section 4 of this Article IV(B), and with respect to such vote, such holder shall have full

voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) The Board of Directors shall consist of eleven (11) members. At each meeting of stockholders at which members of the Board of Directors are to be elected, or whenever members of the Board of Directors are to be elected by written consent of the stockholders, so long as at least (i) a majority of the Series A Preferred Stock and Series B Preferred Stock originally issued remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of a majority of the then issued and outstanding shares of Series A Preferred Stock and the Series B Preferred Stock (voting together as a single class and not as separate series, and on an as converted basis) shall be entitled to elect three (3) members of the Board of Directors; (ii) 10,500,000 shares of Series C Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of a majority of the then issued and outstanding shares of Series C Preferred Stock (voting together as a separate series) shall be entitled to elect one (1) member of the Board of Directors; (iii) 6,000,000 shares of Series D Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of a majority of the then issued and outstanding shares of Series D Preferred Stock (voting together as a separate series) shall be entitled to elect two (2) members of the Board of Directors and (iv) 10,000,000 shares of Series F Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of a majority of the Series F Preferred Stock shall be entitled to elect one (1) member of the Board of Directors. The holders of a majority of the then issued and outstanding shares Common Stock, voting together as a separate class, shall be entitled to elect three (3) members of the Board of Directors. The holders of a majority of the then issued and outstanding shares of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect one (1) member of the Board of Directors.

(c) Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the Delaware General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Sixth Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill

such vacancy at an annual or special meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director may be removed during his or her term of office, without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

6. **Protective Provisions.**

(a) So long as at least 10,000,000 shares of Series F Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least majority of the then outstanding shares of Series F Preferred Stock, (voting as a separate series and on an as-converted basis):

(i) alter or change the rights, preferences or privileges of the shares of Series F Preferred Stock so as to affect the shares of such series; or

(ii) effect (or enter into any agreement or obligation to effect) a transaction or series of related transactions described in Section 2(c)(i) of this Article IV(B) if such transaction is based upon a Corporation valuation of two hundred million dollars ($200,000,000.00) or less.

(b) So long as at least 10,000,000 shares of Series E Preferred Stock and Series F Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series E Preferred Stock and Series F Preferred Stock, (voting together as a single class and on an as-converted basis):

(i) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series F Preferred Stock;

(ii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series F Preferred Stock with respect to voting, dividends, conversion, redemption or upon liquidation;

(iii) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which

the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(iv) increase or decrease the total number of authorized members of the Board of Directors;

(v) declare or pay any dividend on Common Stock or redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(vi) amend the Corporation's Bylaws.

(c) So long as at least 9,950,000 shares of Series E Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series E Preferred Stock, (voting as a separate series and on an as-converted basis):

(i) effect (or enter into any agreement or obligation to effect) a transaction or series of related transactions described in Section 2(c)(i) of this Article IV(B) if such transaction is based upon a Corporation valuation of two hundred million dollars ($200,000,000.00) or less;

(ii) alter or change the rights, preferences or privileges of the shares of Series E Preferred Stock so as to affect the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series E Preferred Stock;

(iv) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series E Preferred Stock with respect to voting, dividends, conversion, redemption or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which

the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(vi) increase or decrease the total number of authorized members of the Board of Directors;

(vii) declare or pay any dividend on Common Stock or redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(viii) amend the Corporation's Bylaws.

(d) So long as at least 6,000,000 shares of Series D Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series D Preferred Stock, (voting as a separate series and on an as-converted basis):

(i) effect (or enter into any agreement or obligation to effect) a transaction or series of related transactions described in Section 2(c)(i) of this Article IV(B) if such transaction is based upon a Corporation valuation of two hundred million dollars ($200,000,000.00) or less;

(ii) alter or change the rights, preferences or privileges of the shares of Series D Preferred Stock so as to affect the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series D Preferred Stock;

(iv) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series D Preferred Stock with respect to voting, dividends, conversion, redemption or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which

the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(vi) increase or decrease the total number of authorized members of the Board of Directors;

(vii) declare or pay any dividend on Common Stock or redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(viii) amend the Corporation's Bylaws.

(e) So long as at least 10,500,000 shares of Series C Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series C Preferred Stock, (voting as a separate series and on an as-converted basis):

(i) effect (or enter into any agreement or obligation to effect) a transaction or series of related transactions described in Section 2(c)(i) of this Article IV(B) if such transaction is based upon a Corporation valuation of two hundred million dollars ($200,000,000.00) or less;

(ii) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect the shares of such series;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock;

(iv) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series C Preferred Stock with respect to voting, dividends, conversion, redemption or upon liquidation;

(v) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which

the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(vi) increase or decrease the total number of authorized members of the Board of Directors;

(vii) declare or pay any dividend on Common Stock or redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(viii) amend the Corporation's Bylaws.

(f) So long as at least 3,500,000 shares of Series B Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, recapitalizations and the like), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, (voting together as a separate series and on an as-converted basis):

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares of such series;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series B Preferred Stock with respect to voting, dividends, conversion or upon liquidation;

(iv) redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at no greater than cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal;

(v) increase or decrease the total number of authorized members of the Board of Directors;

(vi) declare or pay any dividend on Common Stock or redeem, purchase or otherwise acquire (or pay into or set funds aside for a sinking fund for such purpose) any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal; or

(vii) amend the Corporation's Bylaws.

(g) The Corporation shall not (by amendment, merger, consolidation, or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of all Preferred Stock, (voting together as a single class and not as separate series, and on an as-converted basis):

(i) effect a transaction described in Section 2(c)(i) of this Article IV(B);

(ii) amend any stock option or purchase plan to increase or decrease the number of shares covered thereby;

(iii) effect a transaction with an affiliate of the Corporation or any stockholder of the Corporation, except with respect to equity compensation agreements with employees, officers, directors, consultants or other persons performing services for the Corporation that are approved by the Board of Directors;

(iv) voluntarily liquidate, dissolve, or wind-up the Corporation or effect a recapitalization of any shares of the Corporation's capital stock;

(v) effect a sale of material assets of the Corporation, including the sale or exclusive license of any material intellectual property rights of the Corporation; or

(vi) increase or decrease the authorized number of directors of the Corporation.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 of this Article IV(B), the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Sixth Amended and Restated Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common

Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Such dividends, if declared, shall not be cumulative.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Common Stock is not redeemable at the option of the holder thereof or at the option of the Corporation.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

5. **Increase or Decrease in Authorized Shares.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding together with any shares of Common Stock then required to be reserved pursuant to Section 4(j)) by an affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock of the Corporation, voting together as a single class, on an as-converted basis, irrespective of Section 242(b)(2) of the Delaware General Corporation Law.

ARTICLE V

Subject to provisions hereof, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) A director of this Corporation shall not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article VII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article VII by the stockholders of this Corporation shall not adversely affect any right or protection of a director of this Corporation existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

(B) To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this Corporation (and any other persons to which Delaware General Corporation Law permits this corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, as permitted by applicable law and in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, to any extent, in respect of any matter occurring, in whole or in part, or any action or proceeding accruing or arising, in whole or in part, or that, but for this Article VII, would accrue or arise, in whole or in part, prior to such amendment, repeal or adoption of an inconsistent provision.

* * *

The foregoing Sixth Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at San Carlos, California, on August 31, 2009.

/s/ Elon Musk
Elon Musk, Chief Executive Officer

/s/ Craig W. Harding
Craig W. Harding, Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:17 PM 10/23/2009
FILED 05:47 PM 10/23/2009
SRV 090961123 - 3677166 FILE

CERTIFICATE OF AMENDMENT TO THE

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

TESLA MOTORS, INC.

Tesla Motors, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Tesla Motors, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 2003.

B. This Certificate of Amendment has been duly adopted and approved by the stockholders of the Corporation, acting in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

C. Section (B)(4)(d)(i)(B) of Article IV of the Corporation's Sixth Amended and Restated Certificate of Incorporation (as amended, the "Restated Certificate") is hereby amended by adding a new subsection (6) as follows:

"(6) up to 250,000 shares of Common Stock issuable pursuant to that certain Confidential Settlement Agreement dated on or about October 7, 2009."

D. All other provisions of the Restated Certificate shall remain in full force and effect.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer, this 23rd day of October, 2009.

TESLA MOTORS, INC.

/s/ Elon Musk
Elon Musk
Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:48 PM 12/11/2009
FILED 12:42 PM 12/11/2009
SRV 091091534 - 3677166 FILE

CERTIFICATE OF AMENDMENT TO THE

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

TESLA MOTORS, INC.

Tesla Motors, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Tesla Motors, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 2003.

B. This Certificate of Amendment has been duly adopted and approved by the stockholders of the Corporation, acting in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

C. Section (A) of Article IV of the Corporation's Sixth Amended and Restated Certificate of Incorporation (as amended, the "Restated Certificate") is hereby amended and restated in its entirety as follows:

> "(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock designated, respectively, as "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is five hundred thirteen million six thousand seventy-seven (513,006,077) shares, each with a par value of $0.001 per share. Three hundred million (300,000,000) shares shall be Common Stock and two hundred thirteen million six thousand seventy-seven (213,006,077) shares shall be Preferred Stock."

D. All other provisions of the Restated Certificate shall remain in full force and effect.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer, this 7th day of December, 2009.

TESLA MOTORS, INC.

/s/Elon Musk
Elon Musk
Chief Executive Officer

M43383

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:23 PM 01/15/2010
FILED 01:20 PM 01/15/2010
SRV 100043588 - 3677166 FILE

CERTIFICATE OF AMENDMENT TO THE SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF TESLA MOTORS, INC.

Tesla Motors, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Tesla Motors, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 2003.

B. This Certificate of Amendment has been duly adopted and approved by the stockholders of the Corporation, acting in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

C. Section (A) of Article IV of the Corporation's Sixth Amended and Restated Certificate of Incorporation (as amended, the "Restated Certificate") is hereby amended to read in its entirety as follows:

> "(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock designated, respectively, as "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is five hundred forty-one million nine hundred three thousand nine hundred eighty-two (541,903,982) shares, each with a par value of $0.001 per share. Three hundred twenty million (320,000,000) shares shall be Common Stock and two hundred twenty-one million nine hundred three thousand nine hundred eighty-two (221,903,982) shares shall be Preferred Stock."

D. The first paragraph of Section (B) of Article IV of the Restated Certificate is hereby amended to read in its entirety as follows:

> "(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Sixth Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series and the rights and preferences of each series may be designated from time to time pursuant to an amendment to this Certificate of Incorporation in compliance with Section 6 of this Article IV(B). The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of seven million two hundred thirteen thousand (7,213,000) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of seventeen million four hundred fifty-nine thousand four hundred fifty-six (17,459,456) shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of thirty-five million eight hundred ninety-three thousand one hundred seventy-two (35,893,172) shares. The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of eighteen million four

hundred forty thousand four hundred forty-nine (18,440,449) shares. The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of one hundred twelve million eight hundred ninety-seven thousand nine hundred five (112,897,905) shares. The sixth series of Preferred Stock shall be designated "Series F Preferred Stock" and shall consist of thirty million (30,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B)."

E. Section (B)(4)(d)(i)(B) of Article IV of the Restated Certificate is hereby amended by adding a new subsection (7) as follows:

"(7) warrants and any shares of Series E Preferred Stock (and the Common Stock issuable upon conversion thereof) issuable upon exercise of such warrants issued pursuant to that certain Loan Arrangement and Reimbursement Agreement dated on or about December 22, 2009."

F. Section (B)(6)(g)(iii) of Article IV of the Restated Certificate is hereby amended and restated in its entirety as follows:

"(iii) effect a transaction with an affiliate of the Corporation or any stockholder of the Corporation, except with respect to equity compensation agreements with employees, officers, directors, consultants or other persons performing services for the Corporation that are approved by the Board of Directors (provided, however, that the United States Department of Energy shall not be deemed an affiliate or stockholder of the Corporation for purposes of this subsection (iii));"

G. All other provisions of the Restated Certificate shall remain in full force and effect.

[Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer, this 23rd day of December, 2009.

TESLA MOTORS, INC.

Elon Musk
Chief Executive Officer

Exhibit B

Bylaws

BYLAWS

OF

TESLA MOTORS, INC.
(A DELAWARE CORPORATION)

ARTICLE I OFFICES 1

Section 1. Registered Office 1

Section 2. Other Offices 1

ARTICLE II CORPORATE SEAL 1

Section 3. Corporate Seal 1

ARTICLE III STOCKHOLDERS' MEETINGS 1

Section 4. Place of Meetings 1

Section 5. Annual Meeting 1

Section 6. Special Meetings 3

Section 7. Notice of Meetings 3

Section 8. Quorum 3

Section 9. Adjournment and Notice of Adjourned Meetings 4

Section 10. Voting Rights 4

Section 11. Joint Owners of Stock 4

Section 12. List of Stockholders 4

Section 13. Action Without Meeting 5

Section 14. Organization 6

ARTICLE IV DIRECTORS 6

Section 15. Number 6

Section 16. Powers 6

Section 17. Term of Directors. 6

Section 18. Vacancies 7

Section 19. Resignation 7

Section 20. Removal 7

Section 21. Meetings 8

(a) Regular Meetings 8

(b) Special Meetings 8

(c) Meetings by Electronic Communications Equipment 8

(d) Notice of Special Meetings 8

(e) Waiver of Notice 8

Section 22. Quorum and Voting 8

Section 23. Action Without Meeting 8

Section 24. Fees and Compensation 9

Section 25. Committees 9

(a) Executive Committee 9

(b) Other Committees 9

(c) Term 9

(d) Meetings 9
Section 26. Organization 10
ARTICLE V OFFICERS 10
Section 27. Officers Designated 10
Section 28. Tenure and Duties of Officers 10
(a) General 10
(b) Duties of Chairman of the Board of Directors 10
(c) Duties of President 10
(d) Duties of Vice Presidents 10
(e) Duties of Secretary 10
(f) Duties of Chief Financial Officer 11
Section 29. Delegation of Authority 11
Section 30. Resignations 11
Section 31. Removal 11
ARTICLE VI EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION 11
Section 32. Execution of Corporate Instruments 11
Section 33. Voting of Securities Owned by the Corporation 12
ARTICLE VII SHARES OF STOCK 12
Section 34. Form and Execution of Certificates 12
Section 35. Lost Certificates 12
Section 36. Transfers 12
Section 37. Fixing Record Dates 13
Section 38. Registered Stockholders 13
ARTICLE VIII OTHER SECURITIES OF THE CORPORATION 13
Section 39. Execution of Other Securities 13
ARTICLE IX DIVIDENDS 14
Section 40. Declaration of Dividends 14
Section 41. Dividend Reserve 14
ARTICLE X FISCAL YEAR 14
Section 42. Fiscal Year 14
ARTICLE XI INDEMNIFICATION 14
Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents 14
(a) Directors and Executive Officers 14

(b) Other Officers, Employees and Other Agents 15
(c) Expenses 15
(d) Enforcement 15
(e) Non-Exclusivity of Rights 16
(f) Survival of Rights 16
(g) Insurance 16
(h) Amendments 16
(i) Saving Clause 16
(j) Certain Definitions 16
ARTICLE XII NOTICES 17
Section 44. Notices 17
(a) Notice to Stockholders 17
(b) Notice to Directors 17
(c) Affidavit of Mailing 17
(d) Methods of Notice 17
(e) Notice to Person with Whom Communication Is Unlawful 17
ARTICLE XIII AMENDMENTS 17
Section 45. Amendments 17
ARTICLE XIV RIGHT OF FIRST REFUSAL 18
Section 46. Right of First Refusal 18
ARTICLE XV LOANS TO OFFICERS 19
Section 47. Loans to Officers 19
ARTICLE XVI MISCELLANEOUS 20
Section 48. Annual Report 20

BYLAWS

OF

TESLA MOTORS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent. (Del. Code Ann., tit. 8, § 131)

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require. (Del. Code Ann., tit. 8, § 122(8))

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. (Del. Code Ann., tit. 8, § 122(3))

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("***DGCL***"). (Del. Code Ann., tit. 8, § 211(a))

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders, (ii) by or at the direction of the Board of Directors, or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. (Del. Code Ann., tit. 8, § 211(b))

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation; (ii) such other business must be a proper matter for stockholder action under the DGCL; (iii) if the stockholder, or the beneficial owner on whose

behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice; and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner; (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner; and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "***Solicitation Notice***").

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) or (iv) by the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors shall fix. At any time or times that the corporation is subject to Section 2115(b) of the California General Corporation Law ("CGCL"), stockholders holding five percent (5%) or more of the outstanding shares shall have the right to call a special meeting of stockholders as set forth in Section 18(c) herein.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting other than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law or the Certificate of Incorporation, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting; such notice to specify the place, if any, date and hour and purpose or purposes of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. (Del. Code Ann., tit. 8, §§ 222, 229)

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting at which a quorum is present may continue to transact business until adjournment,

notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation, or by these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute, or by the Certificate of Incorporation, or by these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, or represented by proxy at the meeting shall be the act of such class or classes or series. (Del. Code Ann., tit. 8, § 216)

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business, which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. (Del. Code Ann., tit. 8, § 222(c))

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. (Del. Code Ann., tit. 8, §§ 211(e), 212(b))

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest. (Del. Code Ann., tit. 8, § 217(b))

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any examination of any stockholder during the time of the

meeting, as provided by law, produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present. (Del. Code Ann., tit. 8, § 219)

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. (Del. Code Ann., tit. 8, § 228)

(b) Every written consent or electronic transmission shall bear the date and signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. (Del. Code Ann., tit. 8, § 228)

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action, which is consented to, is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder; and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. (Del. Code Ann., tit. 8 § 228(d))

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number.

The authorized number of directors of the corporation shall be fixed by the Board of Directors from time to time.

Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient. (Del. Code Ann., tit. 8, §§ 141(b), 211(b), (c))

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. (Del. Code Ann., tit. 8, § 141(a))

Section 17. Term of Directors.

(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the corporation is subject to Section 2115(b) of the CGCL. During such time or times that the corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting; and (ii) the

stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

Section 18. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director. (Del. Code Ann., tit. 8, § 223(a), (b))

(b) At any time or times that the corporation is subject to Section 2115(b) of the CGCL, if, after the filling of any vacancy, the directors then in office who have been elected by stockholders shall constitute less than a majority of the directors then in office, then

(i) any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of stockholders; or

(ii) the Superior Court of the proper county shall, upon application of such stockholder or stockholders, summarily order a special meeting of the stockholders, to be held to elect the entire board, all in accordance with Section 305(c) of the CGCL, the term of office of any director shall terminate upon that election of a successor. (CGCL §305(c))

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified. (Del. Code Ann., tit. 8, §§ 141(b), 223(d))

Section 20. Removal.

(a) Subject to any limitations imposed by applicable law (and assuming the corporation is not subject to Section 2115 of the CGCL), the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors; or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors.

(b) During such time or times that the corporation is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is

taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or outside the State of Delaware, which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors. (Del. Code Ann., tit. 8, § 141(g))

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or outside the State of Delaware whenever called by the Chairman of the Board, the President or any two of the directors. (Del. Code Ann., tit. 8, § 141(g))

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. (Del. Code Ann., tit. 8, § 141(i))

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, postage prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. (Del. Code Ann., tit. 8, § 229)

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though, had a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting. (Del. Code Ann., tit. 8, § 229)

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws. (Del. Code Ann., tit. 8, § 141(b))

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the

case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. (Del. Code Ann., tit. 8, § 141(f))

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefore. (Del. Code Ann., tit. 8, § 141(h))

Section 25. Committees.

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval; or (ii) adopting, amending or repealing any Bylaw of the corporation. (Del. Code Ann., tit. 8, § 141(c))

(b) **Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws. (Del. Code Ann., tit. 8, § 141(c))

(c) **Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock, the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. (Del. Code Ann., tit. 8, §141(c))

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee

shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. (Del. Code Ann., tit. 8, §§ 141(c), 229)

Section 26. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 27. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. (Del. Code Ann., tit. 8, §§ 122(5), 142(a), (b))

Section 28. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. (Del. Code Ann., tit. 8, § 141(b), (e))

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28. (Del. Code Ann., tit. 8, § 142(a))

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The

Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(f) **Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

Section 29. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 30. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer. (Del. Code Ann., tit. 8, § 142(b))

Section 31. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 32. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to

pledge its credit or to render it liable for any purpose or for any amount. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

Section 33. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President. (Del. Code Ann., tit. 8, § 123)

ARTICLE VII

SHARES OF STOCK

Section 34. Form and Execution of Certificates. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. (Del. Code Ann., tit. 8, § 158)

Section 35. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed. (Del. Code Ann., tit. 8, § 167)

Section 36. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. (Del. Code Ann., tit. 8, § 201, tit. 6, § 8- 401(1))

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL. (Del. Code Ann., tit. 8, § 160 (a))

Section 37. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, be not more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. (Del. Code Ann., tit. 8, § 213)

Section 38. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware. (Del. Code Ann., tit. 8, §§ 213(a), 219)

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 39. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer;

provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 40. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. (Del. Code Ann., tit. 8, §§ 170, 173)

Section 41. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. (Del. Code Ann., tit. 8, § 171)

ARTICLE X

FISCAL YEAR

Section 42. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further*, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum; or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum; or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) **Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part; or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) **Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right, which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) **Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, or executive officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **Insurance.** To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) **Amendments.** Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under applicable law.

(j) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer,

employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Bylaw.

ARTICLE XII

NOTICES

Section 44. Notices.

(a) **Notice to Stockholders.** Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his or her last known post office address as shown by the stock record of the corporation or its transfer agent. (Del. Code Ann., tit. 8, § 222)

(b) **Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) **Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained. (Del. Code Ann., tit. 8, § 222)

(d) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) **Notice to Person with Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or the Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XIII

AMENDMENTS

Section 45. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the corporation.

ARTICLE XIV

RIGHT OF FIRST REFUSAL

Section 46. Right of First Refusal. No stockholder shall sell, assign, pledge, or in any manner transfer any of the shares of stock, of the corporation or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this Bylaw:

(a) If the stockholder desires to sell or otherwise transfer any of his shares of stock, then the stockholder shall first give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

(b) For thirty (30) days following receipt of such notice, the corporation shall have the option to purchase all (but not less than all) of the shares specified in the notice at the price and upon the terms set forth in such notice; *provided, however,* that, with the consent of the stockholder, the corporation shall have the option to purchase a lesser portion of the shares specified in said notice at the price and upon the terms set forth therein. In the event of a gift, property settlement or other transfer in which the proposed transferee is not paying the full price for the shares, and that is not otherwise exempted from the provisions of this Section 46, the price shall be deemed to be the fair market value of the stock at such time as determined in good faith by the Board of Directors. In the event the corporation elects to purchase all of the shares or, with consent of the stockholder, a lesser portion of the shares, it shall give written notice to the transferring stockholder of its election and settlement for said shares shall be made as provided below in paragraph (d).

(c) The corporation may assign its rights hereunder.

(d) In the event the corporation and/or its assignee(s) elect to acquire any of the shares of the transferring stockholder as specified in said transferring stockholder's notice, the Secretary of the corporation shall so notify the transferring stockholder and settlement thereof shall be made in cash within thirty (30) days after the Secretary of the corporation receives said transferring stockholder's notice; provided that if the terms of payment set forth in said transferring stockholder's notice were other than cash against delivery, the corporation and/or its assignee(s) shall pay for said shares on the same terms and conditions set forth in said transferring stockholder's notice.

(e) In the event the corporation and/or its assignees(s) do not elect to acquire all of the shares specified in the transferring stockholder's notice, said transferring stockholder may, within the sixty-day period following the expiration of the option rights granted to the corporation and/or its assignees(s) herein, transfer the shares specified in said transferring stockholder's notice which were not acquired by the corporation and/or its assignees(s) as specified in said transferring stockholder's notice. All shares so sold by said transferring stockholder shall continue to be subject to the provisions of this Bylaw in the same manner as before said transfer.

(f) Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this Bylaw:

(1) A stockholder's transfer of any or all shares held either during such stockholder's lifetime or on death by will or intestacy to such stockholder's immediate family or to any custodian or trustee for the account of such stockholder or such stockholder's immediate family or to any limited partnership of which the stockholder, members of such stockholder's immediate family or any trust for the account of such stockholder or such stockholder's immediate family will be the general of limited partner(s) of such partnership. "Immediate family" as used herein shall mean spouse, lineal descendant, father, mother, brother, or sister of the stockholder making such transfer.

(2) A stockholder's bona fide pledge or mortgage of any shares with a commercial lending institution, provided that any subsequent transfer of said shares by said institution shall be conducted in the manner set forth in this Bylaw.

(3) A stockholder's transfer of any or all of such stockholder's shares to the corporation or to any other stockholder of the corporation.

(4) A stockholder's transfer of any or all of such stockholder's shares to a person who, at the time of such transfer, is an officer or director of the corporation.

(5) A corporate stockholder's transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder.

(6) A corporate stockholder's transfer of any or all of its shares to any or all of its stockholders.

(7) A transfer by a stockholder which is a limited or general partnership to any or all of its partners or former partners.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this Bylaw, and there shall be no further transfer of such stock except in accord with this Bylaw.

(g) The provisions of this Bylaw may be waived with respect to any transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be transferred by the transferring stockholder). This Bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation.

(h) Any sale or transfer, or purported sale or transfer, of securities of the corporation shall be null and void unless the terms, conditions, and provisions of this Bylaw are strictly observed and followed.

(i) The foregoing right of first refusal shall terminate on either of the following dates, whichever shall first occur:

(1) On July 1, 2013; or

(2) Upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

(j) The certificates representing shares of stock of the corporation shall bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

> ."THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

ARTICLE XV

LOANS TO OFFICERS

Section 47. Loans to Officers. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation.

Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute. (Del. Code Ann., tit. 8, §143)

ARTICLE XVI

MISCELLANEOUS

Section 48. Annual Report.

(a) Subject to the provisions of paragraph (b) of this Bylaw, the Board of Directors shall cause an annual report to be sent to each stockholder of the corporation not later than one hundred twenty (120) days after the close of the corporation's fiscal year. Such report shall include a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, accompanied by any report thereon of independent accounts or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. When there are more than 100 stockholders of record of the corporation's shares, as determined by Section 605 of the CGCL, additional information as required by Section 1501(b) of the CGCL shall also be contained in such report, provided that if the corporation has a class of securities registered under Section 12 of the 1934 Act, the 1934 Act shall take precedence. Such report shall be sent to stockholders at least fifteen (15) days prior to the next annual meeting of stockholders after the end of the fiscal year to which it relates.

(b) If and so long as there are fewer than 100 holders of record of the corporation's shares, the requirement of sending of an annual report to the stockholders of the corporation is hereby expressly waived.

CERTIFICATE OF SECRETARY

I hereby certify that:

I am the duly elected and acting Secretary of Tesla Motors, Inc., a Delaware corporation (the "***Company***"); and

Attached hereto is a complete and accurate copy of the Bylaws of the Company as duly adopted by the Board of Directors by Unanimous Written Consent dated July 17, 2003, and said Bylaws are presently in effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of July 2003.

Mark Cameron White
Secretary

AMENDMENT NO. 1 OF

TESLA MOTORS, INC.
BYLAWS

Pursuant to action by the Board effective as of April 22, 2004, the Bylaws are amended to read in full as follows:

1. Article IV, Section 22 shall be amended and restated to read as follows:

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* that a quorum shall not exist and no action may be taken at any meeting unless the number of Preferred Directors (as defined in the Certificate of Incorporation) present at such meeting or participating in such meeting pursuant to subsection (c) above equals or exceeds the number of Common Directors (as defined in the Certificate of Incorporation) present at such meeting or participating in such meeting pursuant to subsection (c) above; and *provided further, however*, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

2. Article XIV, Section 46, subsection (f)(8) shall be added to read as follows:

(8) A transfer by any stockholder of shares of Preferred Stock of the Company.

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit C

Resolutions Adopted By the Board of Directors

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

RESOLUTIONS OF THE BOARD OF DIRECTORS OF TESLA MOTORS, INC. ADOPTED AT A MEETING HELD ON DECEMBER 16, 2009

Approval of Borrowing and Warrant Issuance

WHEREAS, the Company submitted an amended and restated application dated May 4, 2009 (the "*Application*") for term loans to be arranged by the U.S. Department of Energy ("*DOE*") pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program (the "*ATVM Program*") authorized by section 136 of the Energy Independence and Security Act of 2007, as amended from time to time ("*Section 136*") and made by and through the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("*FFB*"); and

WHEREAS, the DOE and the Company entered into a Conditional Commitment Letter dated June 23, 2009 and associated terms and conditions for loans under the ATVM Program letter attached hereto as Exhibit A, along with certain changes that have been presented to the Board (collectively, "*Conditional Commitment Letter and Term Sheet*") which sets forth terms and conditions for the loans and associated agreements in connection with the proposed financing for the Projects (as such term is defined below); and

WHEREAS, the DOE and the Company have negotiated the terms and conditions of a proposed loan arrangement and reimbursement agreement (the "*Arrangement Agreement*"), pursuant to which DOE will agree to arrange for the FFB to make the term loans to the Company in an aggregate principal amount up to $465,047,000 (the "*Loan Facility*"); and this Board has reviewed the terms and conditions of the proposed Loan Facility as set forth in the Conditional Commitment Letter and Term Sheet; and

WHEREAS, in connection with the Arrangement Agreement, the company intends to issue a warrant to DOE (the "*Warrant*"); and

WHEREAS, after careful consideration, the Board, acting in good faith, has determined that the terms and conditions of the proposed loans as set forth in the Arrangement Agreement and the proposed Warrant are fair, just and reasonable as to the Company and that it is in the best interests of the Company and the stockholders of the Company to enter into the Arrangement Agreement and to issue the Warrant.

NOW THEREFORE, BE IT RESOLVED, that the Board deems it desirable and in the best interests of the Company to execute the Arrangement Agreement which sets forth an arrangement in which the Company will obtain direct loans in an aggregate principal amount of up to $465,047,000 to finance eligible costs for the Projects (as defined in the Arrangement Agreement), as follows: (a) a term loan facility in an aggregate principal amount of up to $101,186,000 (the "*Project P Loan*");

and (b) a term loan facility in an aggregate principal amount of up to $363,861,000 (the "*Project S Loan*" and together with the Project P Loan, the "*Loans*"); and in each case, the amount of each such Loan will be subject to verification of historical costs by the Company's auditors, PriceWaterhouseCoopers; and

RESOLVED FURTHER: that the Board hereby approves the Arrangement Agreement in substantially the form attached hereto as Exhibit B, and all other documents and agreements as delivered in connection with the Loan Facility (together with the Arrangement Agreement, such agreements shall be referred to herein as the "*Loan Documents*"), including, without limitation, any note purchase agreement, promissory notes, security agreements, leasehold mortgages, pledge agreements, guaranties, account control agreements, collateral trust agreements and other collateral security documents, and all such other documents which are deemed, upon advice of counsel, to be necessary and advisable in order to carry out the terms and the conditions of the Loan Documents, and that the terms and conditions of the Loan Documents are hereby approved, with such changes as may be approved by any Authorized Officer (as defined below), such approval to be conclusively evidenced by the execution and delivery of any Loan Documents by any such Authorized Officer; and

RESOLVED FURTHER: that any of the Chief Executive Officer, President, Chief Accounting Officer, Chief Financial Officer, Treasurer, Vice President of Finance, Controller, Secretary or General Counsel of the Company (collectively, the "Authorized Officers"), be, and each of them individually hereby is, authorized and empowered to execute and deliver, in the name and on behalf of this Company, the Loan Documents, containing substantially the terms and conditions presented to the Board, with such changes as may be approved by any Authorized Officer, in such form and with such additions and changes to any or all of such terms and conditions as such Authorized Officer executing the Loan Documents on behalf of this Company may approve as necessary, desirable or proper, such Authorized Officer's approval as being conclusively evidenced by the execution and delivery thereof; and

RESOLVED FURTHER: that the Loans and other obligations under the Loan Documents be secured by a first priority lien or security interest on all of the assets acquired with proceeds of the Loans and substantially all of the other assets of the Company, including (i) all direct and indirect domestic subsidiaries of the Company; (ii) if and to the extent requested by DOE from time to time, any foreign subsidiaries of the Company the value of which DOE determines at such time to be material to the interests of DOE and FFB as lender; (iii) all assets financed or acquired with the proceeds of the Loans; (iv) all intellectual property, technical data including software, licenses, general intangibles and goodwill of the Company (subject to certain limited ordinary course exceptions to be agreed); and (v) all leasehold real property interests relating to the Projects, any other future leasehold real property interests that DOE determines are material to the interests of DOE and FFB as lender and all related fixtures, easements, rights-of-way and licenses; provided that the collateral will not include certain leasehold interests existing on the date of the Conditional

Commitment Letter and Term Sheet or any leases relating solely to retail stores or distribution facilities, and that the Authorized Officers of the Company be, and each of them individually hereby is, authorized and empowered to grant such liens and to take such further action to maintain and perfect such liens and enter into or cause to be entered into any other agreements as are necessary, appropriate or desirable to effectuate the purposes of the Loan Documents and to execute any and all certificates, financing statements, including, without limitation, UCC-1 financing statements, Patent and Trademark Office and Copyright Office recordings and any other documents in connection therewith; and

RESOLVED FURTHER, that that the annual interest rate of each Advance (as defined in the Arrangement Agreement) under the Loans shall have its own interest rate (the "*Interest Rate*"), which rate will be determined by the Secretary of the Treasury as of the date the respective Advance is made. The Interest Rate for each Advance will be a rate per annum equal to the single equivalent rate for the payment stream on the Advance under the terms of the Arrangement Agreement; and

RESOLVED FURTHER, the Arrangement Agreement specifies that the outstanding principal amount of the Project P Loan will be payable in 28 equal quarterly installments commencing on December 15, 2012, and the final maturity of the Project P Loan will be September 15, 2019; and

RESOLVED FURTHER, the Arrangement Agreement specifies that the outstanding principal amount of the Project S Loan will be payable in 40 equal quarterly installments commencing on December 15, 2012, and the final maturity of the Project S Loan will be September 15, 2022; and

RESOLVED FURTHER, that the Authorized Officers, or any individuals designated by the Authorized Officers whose names are provided in writing to the Lender from time to time, be, and each of them hereby is, authorized and empowered to request borrowings from time to time pursuant to the terms of the Loan Documents and in the amounts permitted or provided to be borrowed by the Company pursuant to the terms of the Loan Documents; and

RESOLVED FURTHER, that the Company be and hereby is authorized to issue the Warrant in substantially the form attached hereto as Exhibit C to DOE to purchase up to 9,255,035 shares of the Company's Series E Preferred Stock at an exercise price per share equal to $2.5124 per share which shall be exercisable beginning on December 15, 2018 through December 15, 2023, subject to the terms and conditions of the Warrant, and the shares of Series E Preferred Stock issuable upon exercise of the Warrants will receive the benefit of price-based and all other anti-dilution protections consistent with such price-based and other anti-dilution protections enjoyed by holders of currently outstanding warrants to purchase Series E Preferred Stock and that the Authorized Officers be, and each of them hereby is, individually authorized and directed to execute and deliver the Warrant; and

RESOLVED FURTHER, that the Board hereby reserves, effective upon the filing of the Certificate of Amendment (as defined below), such number of shares of Series E Preferred Stock as

may be necessary for issuance pursuant to the terms and conditions of the Warrant, and such number of shares of Common Stock of the Company as may be necessary for issuance upon conversion of such Series E Preferred Stock; and

RESOLVED FURTHER, that the Authorized Officers and each of the responsible attorneys, paralegals and corporate assistants of Wilson Sonsini Goodrich & Rosati, counsel for the Company be, and each of them hereby is, authorized and directed to execute and submit on behalf of the Company, (i) a form of exemption notice, which may be filed electronically, with the California Department of Corporations in connection with the issuance of the Warrant and the underlying Preferred Stock, and further authorized and directed to irrevocably appoint the California Commissioner of Corporations as agent for service of process for the Company in connection with the issuance of the Warrant and the underlying Preferred Stock and (ii) any additional filings which may be required under applicable state or federal securities laws in connection with the issuance of such securities; and

RESOLVED FURTHER, that the Company be and hereby is authorized to enter into a registration rights agreement in substantially the form attached hereto as Exhibit D (the "*Registration Rights Agreement*") to grant DOE certain rights in connection with the Warrant and that the Authorized Officers be, and each of them hereby is, individually authorized and directed to execute and deliver the Registration Rights Agreement; and

RESOLVED FURTHER, that the Company intends, [redacted]; and

RESOLVED FURTHER, that the Authorized Officers of the Company be, and each of them individually hereby is, authorized in the name and on behalf of the Company from time to time to take such additional actions and to execute and deliver such additional certificates, instruments, notices and documents, and from time to time to amend the Loan Documents, the Warrant and the Registration Rights Agreement in such manner as may be required or as such Authorized Officers, or any one or more of them, may deem, upon advice of counsel, necessary, advisable or proper in order to carry out and perform the obligations of this Company under the Loan Documents, the Warrant and the Registration Rights Agreement in the form executed on behalf of this Company pursuant to these resolutions; all such actions to be performed in such manner, and all such certificates, instruments, notices and documents to be executed and delivered in such form, as the Authorized Officer or Authorized Officers performing or executing the same shall approve, such Authorized Officer's or Authorized Officers' approval thereof to be conclusively evidenced by the performance of any such action or the execution and delivery of any such certificate, instrument, notice or document.

Amendment to Sixth Amended and Restated Certificate of Incorporation

WHEREAS, there has been submitted to the Board an amendment to the Sixth Amended and Restated Certificate of Incorporation of the Company (the "*Certificate of Incorporation*") that proposes to increase the authorized shares of Common Stock and Series E Preferred Stock and to exclude the issuance of the Series E Preferred Stock (and the Common Stock issuable upon conversion thereof) issuable upon exercise of the Warrant from the definition of "Additional Stock" for purposes of Section 4(d)(i) of the Certificate of Incorporation, in substantially the form attached hereto as Exhibit E (the "*Certificate of Amendment*"); and

WHEREAS, the Board deems it to be in the best interests of the Company and its stockholders to amend the Certificate of Incorporation of the Company as contemplated by the Certificate of Amendment.

NOW, THEREFORE, BE IT RESOLVED, that it is in the best interest of the Company and its stockholders to amend the Certificate of Incorporation as set forth in the Certificate of Amendment.

RESOLVED FURTHER, that, subject to the affirmative vote of the required number of the Company's stockholders, the Certificate of Amendment, in substantially the form attached hereto as Exhibit E is hereby adopted and approved.

RESOLVED FURTHER, that the proper officers of the Company are hereby authorized and empowered to execute and file the Certificate of Amendment with the Secretary of State of the State of Delaware and to solicit the stockholders of the Company for their consent to the filing of the Certificate of Amendment.

General Authority and Ratification

RESOLVED, that the proper officers of the Company be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Company, to prepare or cause to be prepared and to execute, deliver, verify, acknowledge, file or record any documents, instruments, certificates, statements, or any amendments thereto, as in their sole judgment may be necessary, appropriate or advisable in order to effect the intent of the foregoing resolutions, and to take such further steps and do all such further acts or things as in their sole judgment may be necessary, appropriate or advisable to carry out the intent of the foregoing resolutions; and

RESOLVED FURTHER, that the authority and power given hereunder be deemed retroactive and any and all actions previously taken by any officer or director of the Company in connection with these resolutions are hereby ratified and approved.

Exhibit A

Conditional Commitment Letter and Term Sheet

Exhibit B

Arrangement Agreement

Exhibit C

Warrant

Exhibit D

Registration Rights Agreement

Exhibit E

Certificate of Amendment

Exhibit D

Resolutions Adopted By the Stockholders

TESLA MOTORS, INC.

ACTION BY WRITTEN CONSENT
OF THE STOCKHOLDERS

In accordance with Section 228 of the Delaware General Corporation Law and the bylaws of Tesla Motors, Inc., a Delaware corporation (the "Company"), the undersigned, constituting the holders of the outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all the shares entitled to vote thereon were present and voted, hereby adopt the following resolutions:

Approval of Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation

WHEREAS, the Board of Directors of the Company has determined that it is advisable and in the best interest of the Company to enter into a Loan Arrangement and Reimbursement Agreement (the "Loan Agreement") with the United States Department of Energy (the "DOE") which contemplates, among other matters, the issuance of a warrant to the DOE to purchase shares of the Company's Series E Preferred Stock (the "Warrant");

WHEREAS, the undersigned stockholders believe that it is in their best interests and the best interest of the Company to amend the Company's Sixth Amended and Restated Certificate of Incorporation, as amended (the "Restated Certificate"), in connection with the Loan Agreement and the issuance of the Warrants in order to (i) increase the number of authorized shares of Common Stock to [redacted]; (ii) increase the number of authorized shares of Preferred Stock to [redacted]; (iii) increase the number of authorized shares of Series E Preferred Stock to [redacted]; (iv) exclude the issuance of the Warrant and any shares issuable upon exercise thereof from the definition of "Additional Stock" for purposes of Section (B)(4)(d)(i) of Article IV of the Restated Certificate; and (v) clarify that the DOE shall not be deemed a stockholder or affiliate of the Company for purposes of Section (B)(6)(g)(iii) of Article IV of the Restated Certificate, all as more specifically set forth in the Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation in the form attached as Exhibit A (the "Certificate of Amendment").

NOW, THEREFORE, BE IT RESOLVED, that the Certificate of Amendment is hereby approved.

RESOLVED FURTHER, that, the appropriate officers of the Company are authorized, empowered and directed to execute, acknowledge and file the Certificate of Amendment.

Approval of Registration Rights Agreement

WHEREAS, the Loan Agreement contemplates that the DOE shall be granted certain registration rights in connection with the issuance of the Warrant; and

WHEREAS, pursuant to Section 1.13 of the Fifth Amended and Restated Investors' Rights Agreement dated August 31, 2009, as amended (the "Investors' Rights Agreement"), the holders of Registrable Securities (as defined therein) have agreed to take such actions as are necessary to grant such registration rights to the DOE.

NOW, THEREFORE, BE IT RESOLVED, that the undersigned stockholders, holding at least a majority of Registrable Securities outstanding, consent pursuant to Section 1.13 of the Investors' Rights Agreement to the grant to the DOE of registration rights in connection with the issuance of the Warrants, on the terms and conditions set forth in the Registration Rights Agreement by and between the Company and the DOE in the form attached hereto as Exhibit B.

Waiver of Right of First Offer

WHEREAS, pursuant to Section 2.4 of the Investors' Rights Agreement, the holders of the Company has granted to certain stockholders a right of first offer with respect to future sales by the Company of its Shares (as defined in the Investors' Rights Agreement) (the "Right of First Offer");

WHEREAS, pursuant to Section 5.2 of the Rights Agreement, any term of the Rights Agreement may be amended or waived only with the written consent of the Company and the holders of at least two-thirds (⅔) of the Registrable Securities then outstanding, and any amendment or waiver effected in accordance with Section 5.2 shall be binding on each party to the Rights Agreement, whether or not such party has signed such amendment or waiver; and

WHEREAS, the undersigned stockholders, holding at least two-thirds (⅔) of the Registrable Securities, wish to waive the Right of First Offer with respect to the issuance of the Warrant and any shares issuable upon exercise thereof.

NOW, THEREFORE, BE IT RESOLVED, that the undersigned stockholders, which constitute holders of at least two-thirds (⅔) of the Registrable Securities, hereby waive, in accordance with Section 5.2 of the Investors' Rights Agreement, the Right of First Offer, along with any rights of notice of the transactions contemplated in connection with the issuance of the Warrant pursuant to the Loan Agreement.

Omnibus Resolutions

RESOLVED, that the proper officers of the Company be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Company, to prepare or cause to be prepared and to execute, deliver, verify, acknowledge, file or record any documents, instruments, certificates, statements, papers, or any amendments thereto, as in their sole judgment may be necessary, appropriate or advisable in order to effect the

intent of the foregoing resolutions, and to take such further steps and do all such further acts or things as in their sole judgment may be necessary, appropriate or advisable to carry out the intent of the foregoing resolutions; and

RESOLVED FURTHER, that the authority and power given hereunder be deemed retroactive and any and all actions previously taken by any officer or director of the Company in connection with these resolutions are hereby ratified and approved.

* * *

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

DRAPER FISHER JURVETSON FUND VIII, L.P.

Date: 12/21/09

By: _____
Name: John Fisher
Title: Managing Director

DRAPER FISHER JURVETSON PARTNERS VIII, LLC

Date: 12/21/09

By: _____
Name: John Fisher
Title: Managing Member

DRAPER ASSOCIATES, L.P.

Date: 12/21/09

By: _____
Name: Timothy C. Draper
Title: General Partner

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

DRAPER FISHER JURVETSON GROWTH FUND 2006, L.P.

By: Draper Fisher Jurvetson Growth Fund 2006 Partners, L.P.
Its: General Partner

By: DFJ Growth Fund 2006, Ltd.
Its: General Partner

Date: 1/5/10

By: _____
Mark W. Bailey,
Director

DRAPER FISHER JURVETSON PARTNERS GROWTH FUND 2006, LLC

Date: 1/5/10

By: _____
Mark W. Bailey,
Authorized Member

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

ELON MUSK REVOCABLE TRUST DATED JULY 22, 2003

Date: DECEMBER 23, 2009

By: _____
Elon Musk,
Trustee

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

TECHNOLOGY PARTNERS FUND VIII, LP

By: TP Management VIII, LLC

Date: 12-21-09

By: _____

Name: Ira Ehrenpreis

Title: Managing Member

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

VALOR EQUITY PARTNERS, LP

By: Valor Equity Management, LLC
Its: General Partner

By: Valor Management Corp.
Its: Managing Member

Date: 12/23/09

By: _____
Antonio J. Gracias,
Chief Executive Officer

VALOR VC, LLC

Date: 12/23/09

By: _____
Antonio J. Gracias,
Managing Member

VEP TESLA HOLDINGS, LLC

Date: 12/23/09

By: _____
Antonio J. Gracias,
Chief Executive Officer

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

BAY AREA EQUITY FUND I, L.P.

By: Bay Area Equity Fund Managers I, L.L.C.
Its: General Partner

By: DBL Investors L.L.C.
Its: Managing Member

Date: 12/21/09

By: Nancy E Pfund

Name: NANCY PFUND

Title: MANAGING MEMBER

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

BLACKSTAR INVESTCO LLC

Date: 12/21/09

By: _____

Name: Ruben Simmons

Title: Officer, President

Date: 21/12/09

By: _____

Name: Alexander Nediger

Title: Officer, Assistant Secretary

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

VPVP CLEAN TECH HOLDINGS 2004, L.L.C.

By: Series VPVP IV(Q)
By: Series VPVP IV

By: VantagePoint Venture Associates IV, L.L.C.
Its: Series Manager

Date: Jan. 4, 2010

By: _____

Name: Alan E. Salzman

Title: Managing Member

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

VANTAGEPOINT VENTURE PARTNERS IV PRINCIPALS FUND, L.P.

By: VantagePoint Venture Associates IV, LLC
Its: General Partner

Date: Jan. 4, 2010

By: _____
Alan E. Salzman

Name: _____

Title: Managing Member

VANTAGEPOINT CLEANTECH PARTNERS, L.P.

By: VantagePoint CleanTech Associates
Its: General Partner

Date: Jan 4., 2010

By: _____
Alan E. Salzman

Name: _____

Title: Managing Member

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

JASPER HOLDINGS, LLC

Date: 12/21/09

By: KMB

Name: KIMBAL MUSK

Title: MANAGER

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Company's stockholders. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

AL WAHADA CAPITAL INVESTMENT LLC

Date: 21 December 09

By: _____

Name: Ahmed Saif AL-Darmaki

Title: General Manager

EXHIBIT A

CERTIFICATE OF AMENDMENT

EXHIBIT B

REGISTRATION RIGHTS AGREEMENT

Exhibit E-1

Delaware Good Standing Certificate

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "TESLA MOTORS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

THE FOLLOWING DOCUMENTS HAVE BEEN FILED:

CERTIFICATE OF INCORPORATION, FILED THE FIRST DAY OF JULY, A.D. 2003, AT 6:25 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TWENTY-SECOND DAY OF APRIL, A.D. 2004, AT 6:21 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TENTH DAY OF FEBRUARY, A.D. 2005, AT 1:29 O'CLOCK P.M.

CERTIFICATE OF CORRECTION, FILED THE SECOND DAY OF MAY, A.D. 2005, AT 6:58 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SECOND DAY OF SEPTEMBER, A.D. 2005, AT 10:36 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE TENTH DAY OF MAY, A.D. 2006, AT 4:21 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE EIGHTH DAY OF MAY, A.D.

Jeffrey W. Bullock, Secretary of State

3677166 8310

AUTHENTICATION: 7761494

100043588

DATE: 01-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

2007, AT 1:28 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-EIGHTH DAY OF SEPTEMBER, A.D. 2007, AT 3:39 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE FOURTEENTH DAY OF FEBRUARY, A.D. 2008, AT 8:15 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE ELEVENTH DAY OF MAY, A.D. 2009, AT 3:46 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE THIRTY-FIRST DAY OF AUGUST, A.D. 2009, AT 6:39 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-THIRD DAY OF OCTOBER, A.D. 2009, AT 5:47 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF DECEMBER, A.D. 2009, AT 12:42 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE FIFTEENTH DAY OF JANUARY, A.D. 2010, AT 1:20 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "TESLA MOTORS, INC.".

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

Jeffrey W. Bullock, Secretary of State

3677166 8310

AUTHENTICATION: 7761494

100043588

DATE: 01-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

The First State

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

Jeffrey W. Bullock, Secretary of State

3677166 8310

AUTHENTICATION: 7761494

100043588

DATE: 01-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

Exhibit E-2

California Good Standing Certificate

State of California
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME:

TESLA MOTORS, INC.

FILE NUMBER:	C2550630
REGISTRATION DATE:	09/02/2003
TYPE:	FOREIGN CORPORATION
JURISDICTION:	DELAWARE
STATUS:	ACTIVE (GOOD STANDING)

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

The records of this office indicate the entity is qualified to transact intrastate business in the State of California.

No information is available from this office regarding the financial condition, business activities or practices of the entity.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of January 04, 2010.

DEBRA BOWEN
Secretary of State

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CA 94257-0540

In Reply Refer To : 657:RLG
Date : 01/04/10

ENTITY STATUS

Note: This letter does not reflect the entity's status with any other agency.

Entity Name : TESLA MOTORS, INC.

Entity Number : 2550630

__X__ 1. The above entity is in good standing with this agency.

_____ 2. This entity is currently exempt from tax under Revenue and Taxation Code Section 23701_____.

_____ 3. Our records indicate the above entity is not _____ through the Secretary of State to transact business in California.

_____ 4. The above entity was incorporated, qualified, organized, or registered through the Secretary of State on .

____ 5. The above entity has an unpaid liability of $ for account period(s) ending .

____ 6. Our records do not show that the above entity filed returns for account period(s) ending .

____ 7. The above entity was effective .

_____ 8. The above entity's current address on record with this agency is:

_____ 9. We do not have current information on the above entity.

Comments:

REPRESENTATIVE

ASSISTANCE
Telephone assistance is available from 7 a.m. until 8 p.m. Monday through Friday and from 8 a.m. until 5 p.m. on Saturdays. We may modify these hours without notice to meet operational needs.

From within the United States, call.....(800) 852-5711
From outside the United States, call (not toll-free).....(916) 845-6500

Website at: www.ftb.ca.gov

Assistance for person with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Exhibit E-3

Colorado Good Standing Certificate

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE

I, Bernie Buescher, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Tesla Motors, Inc.

is an entity formed or registered under the law of **Delaware** has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20091632423.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/04/2010 that have been posted, and by documents delivered to this office electronically through 01/06/2010 @ 19:06:39.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 01/06/2010 @ 19:06:39 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 7541555.

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click Business Center and select "Frequently Asked Questions."

Exhibit E-4

Florida Good Standing Certificate

State of Florida

Department of State

I certify from the records of this office that TESLA MOTORS, INC. is a corporation organized under the laws of Delaware, authorized to transact business in the State of Florida, qualified on June 23, 2009.

The document number of this corporation is F09000002525.

I further certify that said corporation has paid all fees due this office through December 31, 2009, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Sixth day of January, 2010

Secretary of State

Authentication ID: **500164950175-010610-F09000002525**

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.
https://efile.sunbiz.org/certauthver.html

Exhibit E-5

Illinois Good Standing Certificate

File Number 6665-283-1

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that

TESLA MOTORS, INC., INCORPORATED IN DELAWARE AND LICENSED TO TRANSACT BUSINESS IN THIS STATE ON JUNE 18, 2009, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS STATE RELATING TO THE PAYMENT OF FRANCHISE TAXES, AND AS OF THIS DATE, IS A FOREIGN CORPORATION IN GOOD STANDING AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.

In Testimony Whereof, *I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this* 6TH *day of* JANUARY *A.D.* 2010 .

Jesse White

SECRETARY OF STATE

Authentication #: 1000602996

Authenticate at: http://www.cyberdriveillinois.com

Exhibit E-6

New York Good Standing Certificate

State of New York
Department of State } ss:

I hereby certify, that TESLA MOTORS, INC. a DELAWARE corporation, filed an Application for Authority to do business in the State of New York on 06/19/2009. I further certify that so far as shown by the records of this Department, such corporation is still authorized to do business in the State of New York.

***

Witness my hand and the official seal of the Department of State at the City of Albany, this 06th day of January two thousand and ten.

Daniel Shapiro
First Deputy Secretary of State

2100103051 * FZ

Exhibit E-7

Washington Good Standing Certificate

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, SAM REED, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF EXISTENCE/AUTHORIZATION

OF

TESLA MOTORS, INC.

I FURTHER CERTIFY that the records on file in this office show that the above named Profit Corporation was formed under the laws of the State of DE and was issued a Certificate Of Authority in Washington on 6/16/2009.

I FURTHER CERTIFY that as of the date of this certificate, TESLA MOTORS, INC. remains active and has complied with the filing requirements of this office.

Date: January 8, 2010

UBI: 602-932-644

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

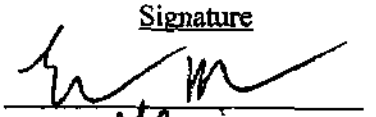
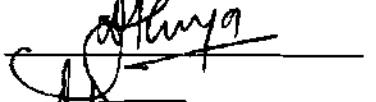
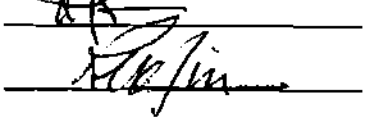
Sam Reed

Sam Reed, Secretary of State

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

Exhibit F

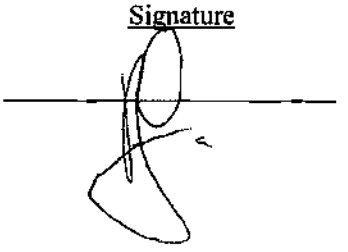
Incumbency

Name	Office	Signature
Elon Musk	Chief Executive Officer	
Deepak Ahuja	Chief Financial Officer	
Mike Taylor	Vice President of Finance	
Rex Liu	Controller	

***CONFIDENTIAL** - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors, Inc. considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit G

Incumbency

Name	Office	Signature
Simon Rochefort	Gerant (Manager)	

OFFICER'S CERTIFICATE

Date of this Certificate: January 20, 2010

United States Department of Energy
Attn: Director, Advanced Technology Vehicles Manufacturing Loan Program
Re: Tesla Motors, Inc.

Ladies and Gentlemen:

This Officer's Certificate is delivered to you in connection with the Loan Arrangement and Reimbursement Agreement, dated as of January 20, 2010 (the "Arrangement Agreement"), by and between (i) Tesla Motors, Inc. (the "Borrower") and (ii) the United States Department of Energy ("DOE").

All capitalized terms used in this Officer's Certificate shall have their respective meanings specified in the Arrangement Agreement.

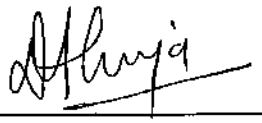
On behalf of the Borrower, I, Deepak Ahuja, HEREBY CERTIFY that I am the duly elected and qualified Chief Financial Officer of the Borrower and FURTHER CERTIFY that, as of the date hereof:

1. The reference to the Loan Arrangement and Reimbursement Agreement in the phrase "warrants and any shares of Series E Preferred Stock (and the Common Stock issuable upon conversion thereof) issuable upon exercise of such warrants issued pursuant to that certain Loan Arrangement and Reimbursement Agreement dated on or about December 22, 2009" contained in Section E of the Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation attached hereto as Exhibit A (the "Charter Amendment") is intended to refer to the Loan Arrangement and Reimbursement Agreement approved by the Board of Directors of the Borrower, which is dated as of January 20, 2010.

2. The Warrants and the Warrant Shares do not constitute "Additional Stock" under the Sixth Amended and Restated Certificate of Incorporation of the Borrower, as amended (the "Charter"), by reason of clause (7) of Section (B)(4)(d)(i)(B) of Article IV of the Charter, as set forth in Section E of the Charter Amendment.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate as of the date first written above.

TESLA MOTORS, INC.

By: 

Name: Deepak Ahuja

Title: Chief Financial Officer

Exhibit A

Charter Amendment

[See attached]

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TESLA MOTORS, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF JANUARY, A.D. 2010, AT 1:20 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

Jeffrey W. Bullock, Secretary of State

3677166 8100

100043588

AUTHENTICATION: 7761493

DATE: 01-15-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:23 PM 01/15/2010
FILED 01:20 PM 01/15/2010
SRV 100043588 - 3677166 FILE

CERTIFICATE OF AMENDMENT TO THE

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

TESLA MOTORS, INC.

Tesla Motors, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Tesla Motors, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 2003.

B. This Certificate of Amendment has been duly adopted and approved by the stockholders of the Corporation, acting in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

C. Section (A) of Article IV of the Corporation's Sixth Amended and Restated Certificate of Incorporation (as amended, the "Restated Certificate") is hereby amended to read in its entirety as follows:

> "(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock designated, respectively, as "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is five hundred forty-one million nine hundred three thousand nine hundred eighty-two (541,903,982) shares, each with a par value of $0.001 per share. Three hundred twenty million (320,000,000) shares shall be Common Stock and two hundred twenty-one million nine hundred three thousand nine hundred eighty-two (221,903,982) shares shall be Preferred Stock."

D. The first paragraph of Section (B) of Article IV of the Restated Certificate is hereby amended to read in its entirety as follows:

> "(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Sixth Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series and the rights and preferences of each series may be designated from time to time pursuant to an amendment to this Certificate of Incorporation in compliance with Section 6 of this Article IV(B). The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of seven million two hundred thirteen thousand (7,213,000) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of seventeen million four hundred fifty-nine thousand four hundred fifty-six (17,459,456) shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of thirty-five million eight hundred ninety-three thousand one hundred seventy-two (35,893,172) shares. The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of eighteen million four

hundred forty thousand four hundred forty-nine (18,440,449) shares. The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of one hundred twelve million eight hundred ninety-seven thousand nine hundred five (112,897,905) shares. The sixth series of Preferred Stock shall be designated "Series F Preferred Stock" and shall consist of thirty million (30,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B)."

E. Section (B)(4)(d)(i)(B) of Article IV of the Restated Certificate is hereby amended by adding a new subsection (7) as follows:

"(7) warrants and any shares of Series E Preferred Stock (and the Common Stock issuable upon conversion thereof) issuable upon exercise of such warrants issued pursuant to that certain Loan Arrangement and Reimbursement Agreement dated on or about December 22, 2009."

F. Section (B)(6)(g)(iii) of Article IV of the Restated Certificate is hereby amended and restated in its entirety as follows:

"(iii) effect a transaction with an affiliate of the Corporation or any stockholder of the Corporation, except with respect to equity compensation agreements with employees, officers, directors, consultants or other persons performing services for the Corporation that are approved by the Board of Directors (provided, however, that the United States Department of Energy shall not be deemed an affiliate or stockholder of the Corporation for purposes of this subsection (iii));"

G. All other provisions of the Restated Certificate shall remain in full force and effect.

[Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer, this 23rd day of December, 2009.

TESLA MOTORS, INC.

Elon Musk
Chief Executive Officer

CERTIFICATE OF AMENDMENT TO THE

SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

TESLA MOTORS, INC.

Tesla Motors, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Tesla Motors, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 1, 2003.

B. This Certificate of Amendment has been duly adopted and approved by the stockholders of the Corporation, acting in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

C. Section (B)(4)(d)(i)(B)(7) of Article IV of the Corporation's Sixth Amended and Restated Certificate of Incorporation (as amended, the "Restated Certificate") is hereby amended and restated in its entirety as follows:

> "(7) warrants and any shares of Series E Preferred Stock (and the Common Stock issuable upon conversion thereof) issuable upon exercise of such warrants issued pursuant to that certain Loan Arrangement and Reimbursement Agreement dated January 20, 2010 between the Corporation and the United States Department of Energy."

D. All other provisions of the Restated Certificate shall remain in full force and effect.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer, this [__] day of January, 2010.

TESLA MOTORS, INC.

Elon Musk
Chief Executive Officer

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

TESLA MOTORS NEW YORK LLC

SECRETARY'S CERTIFICATE OF SOLE MEMBER

The undersigned, being the duly elected, qualified and acting Assistant Secretary of Tesla Motors, Inc., the sole member (the "Sole Member") of Tesla Motors New York LLC, a New York limited liability company (the "Company"), does hereby certify, as of January 20, 2010, pursuant to the Loan Arrangement and Reimbursement Agreement, dated as of the date hereof (the "Arrangement Agreement"), by and between the Sole Member and the United States Department of Energy, an agency of the United States of America, that:

1. Attached hereto as Exhibit A is a true and complete copy of the Articles of Organization, including all amendments thereto, of the Company, certified by the Secretary of State of the State of New York;

2. Attached hereto as Exhibit B is a true and complete copy of the Limited Liability Company Operating Agreement of the Company, as in effect on and as of the date hereof;

3. Attached hereto as Exhibit C is a true and complete copy of the resolutions adopted by the Company's Sole Member relating to the authorization, execution, delivery and performance of the Transaction Documents to which the Company is a party and the documents related thereto, and such resolutions have not been amended, annulled, rescinded or revoked and remain in full force and effect;

4. Attached hereto as Exhibit D is a certificate of the Secretary of State of the State of New York, dated January 14, 2010, with respect to the standing of the Company as a limited liability company formed under the laws of the State of New York; and

5. The persons listed on Exhibit E hereto are on and as of the date hereof, duly elected officers of the Sole Member of the Company holding the office(s) set opposite their respective names, and the signatures set opposite their respective names are the true signatures of said officers.

All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Arrangement Agreement.

[Remainder of page intentionally left blank.]

CONFIDENTIAL - This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first written above.

By: _____
Name: Craig Harding
Title: Assistant Secretary of Tesla Motors, Inc.

The undersigned, being the Chief Financial Officer of the Sole Member of the Company, hereby certifies that Craig Harding is the duly elected, qualified and acting Assistant Secretary of the Sole Member of the Company and that the above signature is his genuine signature.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first written above.

By: _____
Name: Deepak Ahuja
Title: Chief Financial Officer of Tesla Motors, Inc.

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit A

Articles of Organization

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 2, 2009.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

CT-07

090930000157

ARTICLES OF ORGANIZATION

OF

TESLA MOTORS NEW YORK LLC

Under Section 203 of the Limited Liability Company Law

FIRST: The name of the limited liability company is: **Tesla Motors New York LLC.**

SECOND: The county within this state in which the office of the limited liability company is to be located is: **New York.**

THIRD: The secretary of state is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the secretary of state shall mail a copy of any process against the limited liability company served upon him or her is: **c/o CT CORPORATION SYSTEM, 111 Eighth Avenue, New York, New York 10011.**

FOURTH: The name and street address within this state of the registered agent of the limited liability company upon whom and at which process against the limited liability company can be served is: **CT CORPORATION SYSTEM, 111 Eighth Avenue, New York, New York 10011.**

(Signature)

Elizabeth L. Grennan, Esq.
Hogan & Hartson LLP
Organizer

090930000157

CT-07

090930000157

Articles of Organization

of

Tesla Motors New York LLC

Under Section 203 of the Limited Liability Company Law

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 30 2009
TAX $ ____
BY: KMA

Filed by:

Hogan & Hartson LLP
(Name)

875 Third Avenue
(Mailing address)

New York, NY 10022
(City, State and ZIP code)

FILED
2009 SEP 30 AM 9:26

Cst ref# 76le7356my DRAWDOWN

NYD71 – 08/08/08 C T System Online

RECEIVED
2009 SEP 29 PM 4:04

NWY - 005583/000001 - 1159133 v1

161

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit B

Limited Liability Company Operating Agreement

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

TESLA MOTORS NEW YORK LLC

This Limited Liability Company Operating Agreement (this "Agreement") of Tesla Motors New York LLC, a New York limited liability company (the "Company"), is made as of December 14, 2009 but is deemed effective as of September 30, 2009, by and between the Company and Tesla Motors, Inc., a Delaware corporation and the sole member (the "Member") of the Company.

WHEREAS, the Member desires to conduct the business of the Company as a limited liability company pursuant to the laws of the State of New York.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and intending to be legally bound, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees, effective as of the date hereof, as follows:

1. Formation and Certificates. The Company was formed on September 30, 2009 by filing Articles of Organization (the "Articles) with the New York Department of State pursuant to the New York Limited Liability Company Act, as amended ("New York Law"). Should the Company wish to do business in any other jurisdiction or jurisdictions, the Member shall execute, deliver and file, or cause the execution, delivery and filing of any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in such other jurisdiction or jurisdictions.

2. Name. The name of the Company is "Tesla Motors New York LLC" and all Company business shall be conducted under such name or such other or additional name or names and variations thereof as the Member may from time to time determine. The Member shall file, or cause to be filed, any fictitious name certificate and similar filings, and any amendments thereto, that the Member considers appropriate or advisable.

3. Purpose. The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under New York Law and engaging in any and all activities necessary, convenient, desirable or incidental to the foregoing.

4. Principal Place of Business. The principal place of business of the Company shall be at 511 West 25th Street, New York, New York 10001. At any time, the Member may change the location of the Company's principal place of business.

5. Member. The name and mailing address of the Member is as follows: Tesla Motors, Inc., 1050 Bing Street, San Carlos, California 94070.

6. Registered Agent and Office. The Registered Office and the Registered Agent of the Company shall be as designated in the initial or amended Articles. The Registered Office

and/or Registered Agent may be changed from time to time in accordance with New York Law. If the Registered Agent resigns, the Member shall promptly appoint a successor.

7. Intention for Company. The Member has formed the Company as a limited liability company under New York Law. Except for matters involving taxes, the Member specifically intends that the Company not be a partnership (including a limited partnership) or any other venture, but a limited liability company under and pursuant to New York Law. No Member or Manager shall be construed to be a partner in the Company or a partner of any other Member, Manager, or person, and the Articles, this Agreement, and the relationships created by and arising from them shall not be construed to suggest otherwise.

8. Powers. The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by the members of limited liability companies under New York law.

9. Management of the Company. The business affairs of the Company shall be managed by the Member.

10. Capitalization. The Member has contributed, or will contribute as promptly as practicable hereafter, the real property and other assets set forth on Exhibit A attached hereto, on a quitclaim basis (the "Assigned Assets") in exchange for 100 percent of the membership interests in the Company, which shall consist of one hundred (100) Investor Common Units. The parties acknowledge that all of the Assigned Assets have been or will be transferred on an "AS IS, WHERE IS" basis without any express or implied warranties or representations of any kind, including any warranty of merchantability or fitness.

11. Contributions. Except as set forth in Section 10, the Member is not required to make capital contributions to the Company.

12. Allocation of Profits and Losses. The Company's profits and losses, and all items allocable for tax purposes, shall be allocated to the Member.

13. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts as determined by the Member.

14. Tax Matters; Annual Tax Returns. The Member shall include all items of Company income, gain, loss and deduction on the Member's tax returns. The Member shall prepare or cause to be prepared all tax returns and any other reports or forms as are required by the Internal Revenue Service or as may be necessary for the Member to file its federal or any required state or local income tax return.

15. Tax Treatment of Company. Solely for federal, state and local income tax purposes, the Member intends that the Company will be disregarded as an entity separate from the Member as set forth in Treasury Regulations Section 301.7701-3.

16. Banking. The Member may open and thereafter maintain one or more separate bank accounts in the name of the Company in which the funds of the Company may be

deposited. No funds of any other person shall be deposited in any such account, and the funds in any such account shall be used solely for the business of the Company.

17. Transfer of Interest. The Member may Transfer all or any part of the Investor Common Units in accordance with New York Law. For purposes of this Agreement, "Transfer" shall mean any direct or indirect sale, assignment, disposition, exchange, mortgage, pledge or grant of a security interest in, foreclosure or any other transfer of any portion of, or economic or voting interest in, such Investor Common Units.

18. Admission of Additional Members. One or more additional members may be admitted to the Company with the consent of the Member upon such terms and conditions as the Member, in its discretion, shall approve. In the event of the admission of any new member or members, the Member and such additional member or members shall execute an appropriate amendment to this Agreement reflecting such terms and conditions and such other matters which the Member deems appropriate or upon which the Member and such additional member or members shall agree.

19. Resignation of Member. The Member may resign from the Company in accordance with New York Law.

20. Liability of Member. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided for in New York Law.

21. Exculpation and Indemnity. The Member shall not be liable or accountable in damages or otherwise to the Company for any act or omission done or omitted by it in good faith, unless such act or omission constitutes gross negligence, willful misconduct, or a breach of this Agreement on the part of the Member. The Company shall indemnify the Member to the fullest extent permitted by law against any loss, liability, damage, judgment, demand, claim, cost or expense incurred by or asserted against the Member (including, without limitation, reasonable attorneys' fees and disbursements incurred in the defense thereof) arising out of any act or omission of the Member in connection with the Company, unless such act or omission constitutes bad faith, gross negligence or willful misconduct on the part of the Member.

22. Dissolution. Dissolution of the Company will occur upon the affirmative vote of the Member.

23. Amendments. This Agreement may be amended only in writing. Any such amendment must be approved and executed by the Member.

24. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Member and, to the extent permitted by this Agreement, its successors, legal representatives and assigns.

25. Captions. Captions contained in this Agreement are inserted as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

26. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by said laws.

28. Entire Agreement. This Agreement constitutes the entire agreement of the Member with respect to the subject matter hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Member has executed this Limited Liability Company Operating Agreement of Tesla Motors New York LLC, as of the date and year first above written.

TESLA MOTORS NEW YORK LLC

By: TESLA MOTORS, INC.,
its sole member

By: _____
Name: Jon Sobel
Title: General Counsel

EXHIBIT A

The Member has contributed $1,000 to the Company as of the date hereof and such contribution will constitute the "Assigned Assets" as defined in Section 10.

Exhibit C

Resolutions Adopted By the Sole Member

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

RESOLUTIONS ADOPTED BY THE
SOLE MEMBER OF TESLA MOTORS NEW YORK LLC

January 15, 2010

Approval of Guarantee and Pledge and Security Agreement

WHEREAS, Tesla Motors, Inc., a Delaware corporation (the "*Parent*"), submitted an amended and restated application dated May 4, 2009 (the "*Application*") for term loans to be arranged by the U.S. Department of Energy ("*DOE*") pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program (the "*ATVM Program*") authorized by section 136 of the Energy Independence and Security Act of 2007, as amended from time to time ("*Section 136*") and made by and through the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of the Treasury ("*FFB*"); and

WHEREAS, the DOE and the Parent entered into a Conditional Commitment Letter dated June 23, 2009 and associated terms and conditions for loans under the ATVM Program letter, which, together with certain changes that have been presented to the Board of Directors of Parent, collectively set forth terms and conditions for the loans and associated agreements in connection with the proposed financing of certain projects to consist of a manufacturity facility for the design and manufacture of lithium-ion battery packs, electric motors and electric components and a manufacturing facility to complete the development of and assembly of the Tesla Model S sedan (all as contemplated by the Application); and

WHEREAS, the DOE and the Parent have negotiated the terms and conditions of a proposed loan arrangement and reimbursement agreement (the "*Arrangement Agreement*"), pursuant to which DOE will agree to arrange for the FFB to make the term loans to the Parent in an aggregate principal amount up to $465,047,000 (the "*Loan Facility*"); and

WHEREAS, it is a condition precedent to the availability of the loans to be arranged under the Arrangement Agreement and the other related agreements that the Company enter into a guarantee, in substantially the form attached hereto as Exhibit A (the "*Guarantee*"), to guarantee the obligations of Parent under the Arrangement Agreement and the other related agreements, and a pledge and security agreement, in substantially the form attached hereto as Exhibit B (the "*Security Agreement*"), to provide security for the obligations of Parent under the Arrangement Agreement and the other related agreements; and

WHEREAS, the Company, a wholly-owned subsidiary of Parent, will derive substantial direct and indirect benefits from the extensions of credit to Parent under the Arrangement Agreement and the other related agreements; and

WHEREAS, after careful consideration, the Member, acting in good faith, has determined that the terms and conditions of the proposed Guarantee and the terms and conditions of the proposed Security Agreement are fair, just and reasonable as to the Company and that it is in the best interests of the Company to enter into the Guarantee and the Security Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Member hereby approves the Guarantee in substantially the form attached hereto as Exhibit A, the Security Agreement in substantially the form attached hereto as Exhibit B, and all other documents and agreements as delivered in connection with the Guarantee and the Security Agreement (together with the Guarantee and Security Agreement, such agreements shall be referred to herein as the "*Guarantee Documents*"), including, without limitation, any security agreements, leasehold mortgages, pledge agreements, guaranties, account control agreements, collateral trust agreements and other collateral security documents, and all such other documents which are deemed, upon advice of counsel, to be necessary and advisable in order to carry out the terms and the conditions of the Guarantee Documents, and that the terms and conditions of the Guarantee Documents are hereby approved, with such changes as may be approved by the Member, such approval to be conclusively evidenced by the execution and delivery of any Guarantee Documents by the Member;

RESOLVED FURTHER, that the Member, be, and hereby is, authorized and empowered to execute and deliver, in the name and on behalf of this Company, the Guarantee Documents, containing substantially the terms and conditions presented to the Member, with such changes as may be approved by the Member, in such form and with such additions and changes to any or all of such terms and conditions as the Member may approve as necessary, desirable or proper, the Member's approval as being conclusively evidenced by the execution and delivery thereof;

RESOLVED FURTHER, that the loans and other obligations under the Arrangement Agreement and the other related agreements be secured by a first priority lien or security interest on substantially all of the assets of the Company, whether now owned or hereafter acquired, including, without limitation, accounts, cash, chattel paper, commercial tort claims, deposit accounts, documents, equipment, fixtures, general intangibles, goods, instruments, intellectual property (including, without limitation, all registered and unregistered patents, trademarks and copyrights), inventory, investment property, letter-of-credit rights, real property, motor vehicles, and all proceeds of the foregoing, and that the Member be, and hereby is, authorized and empowered, on behalf of the Company, to guarantee the loans and other obligations under the Arrangement Agreement and the other related agreements and to grant such liens and to take such further action to maintain and perfect such liens and enter into or cause to be entered into any other agreements as are necessary, appropriate or desirable to effectuate the purposes of the Guarantee Documents and to execute any and all certificates, and financing statements, including, without limitation, UCC-1 financing statements, Patent and Trademark Office and Copyright Office recordings and any other documents in connection therewith; and

RESOLVED FURTHER, that the Member be, and hereby is, authorized in the name and on behalf of the Company from time to time to take such additional actions and to execute and deliver such additional certificates, instruments, notices and documents, and from time to time to amend the

Guarantee Documents in such manner as may be required or as the Member may deem, upon advice of counsel, necessary, advisable or proper in order to carry out and perform the obligations of the Company under the Guarantee Documents in the form executed on behalf of the Company pursuant to these resolutions; all such actions to be performed in such manner, and all such certificates, instruments, notices and documents to be executed and delivered in such form, as the Member shall approve, the Member's approval thereof to be conclusively evidenced by the performance of any such action or the execution and delivery of any such certificate, instrument, notice or document.

General Authority and Ratification

RESOLVED, that the Member be, and hereby is, authorized and directed, for and in the name and on behalf of the Company, to prepare or cause to be prepared and to execute, deliver, verify, acknowledge, file or record any documents, instruments, certificates, statements, or any amendments thereto, as in the Member's sole judgment may be necessary, appropriate or advisable in order to effect the intent of the foregoing resolutions, and to take such further steps and do all such further acts or things as in the Member's judgment may be necessary, appropriate or advisable to carry out the intent of the foregoing resolutions; and

RESOLVED FURTHER, that the authority and power given hereunder be deemed retroactive and any and all actions previously taken by the Member of the Company in connection with these resolutions are hereby ratified and approved.

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit A

Guarantee

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit B

Pledge and Security Agreement

CONFIDENTIAL *- This document was developed at private expense and includes trade secrets and commercial or financial information, or both, that Tesla Motors New York LLC considers privileged, confidential and exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)).*

Exhibit D

New York Good Standing Certificate

State of New York
Department of State } ss:

I hereby certify, that TESLA MOTORS NEW YORK LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/30/2009, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:

A Certificate of Publication of TESLA MOTORS NEW YORK LLC was filed on 12/10/2009.

I further certify, that no other documents have been filed by such Limited Liability Company.

***

Witness my hand and the official seal of the Department of State at the City of Albany, this 14th day of January two thousand and ten.

Daniel Shapiro
First Deputy Secretary of State

201001150394 * EZ

Exhibit E

Incumbency

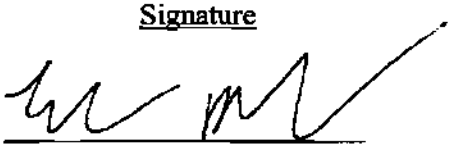
Name	Office	Signature
Elon Musk	Chief Executive Officer of Tesla Motors, Inc.	
Deepak Ahuja	Chief Financial Officer of Tesla Motors, Inc.	_____
Mike Taylor	Vice President of Finance of Tesla Motors, Inc.	_____
Rex Liu	Controller of Tesla Motors, Inc.	_____

Exhibit E

Incumbency

Name	Office	Signature
Elon Musk	Chief Executive Officer of Tesla Motors, Inc.	
Deepak Ahuja	Chief Financial Officer of Tesla Motors, Inc.	
Mike Taylor	Vice President of Finance of Tesla Motors, Inc.	
Rex Liu	Controller of Tesla Motors, Inc.	

EXECUTION COPY

INFORMATION CERTIFICATE
OF
TESLA MOTORS, INC.

January 20, 2010

In connection with a proposed contractual loan arrangement (the "Loan Arrangement") under consideration to be provided to **TESLA MOTORS, INC.** (the "Applicant") by **U.S. DEPARTMENT OF ENERGY** (the "Lender"), Applicant, after due investigation, does hereby certify to the Lender as set forth below.

Certain capitalized terms used in this Information Certificate are defined as set forth in Annex A. In addition, (i) the term "Company" means Applicant and each Subsidiary of Applicant, both domestic and foreign, and any existing holding company for Applicant and (ii) the term "Information Certificate" shall mean this certificate, together with any and all exhibits, schedules, annexes and other attachments hereto.

A. Company Organization and Ownership

1. Organizational Structure Chart. Schedule A-1 sets forth a true and correct organizational structure chart showing (a) the names and ownership relationship of Applicant, each of the other Companies and their Affiliates, including all direct and indirect holders of 10% or more of the voting and/or equity interests in Applicant and (b) a brief description of each Company's business.

2. Company Identification. Schedule A-2 sets forth for each Company (a) the full and correct legal name of such Company, (b) the type of organization of such Company, (c) the jurisdiction of organization of such Company, (d) its federal employer identification number and (e) the organizational identification number of such Company issued by its jurisdiction of organization (or if none is issued by such jurisdiction, state "none"). Each Company is in good standing, if applicable, in its jurisdiction of organization. Applicant has provided Lender with true and correct copies of each of the following, as applicable, for each Company: (i) all certificates of incorporation or formation, bylaws, limited liability company operating agreements, partnership agreements and other organizational documents, including all amendments thereto, and (ii) to the extent based upon a U.S. jurisdiction, all certificates of existence and good standing from such Company's jurisdiction of incorporation or formation, as applicable.

3. Other Names. Schedule A-3 sets forth for each Company any other names (including trade names and similar appellations) currently used by such Company or any of its divisions or other business units in the operation of its business (other than product names that are covered under "Intellectual Property" below).

4. Fundamental Changes. Schedule A-4 sets forth for each Company the following information, in chronological order, for any change in legal name, change in trade name, change in jurisdiction of organization, merger, consolidation, reorganization, any other change in corporate structure, or any acquisition or disposition of a substantial portion of the equity or assets or a business division of any Person, in each case to which such Company was subject at any time during the past five years: (a) the date of such event, (b) a summary description of such event and (c) if different, the information required by Schedule A-2 for any other business or organization to which such Company became the successor as a result of such event or which was sold in any such acquisition event

5. Foreign Qualifications. Each Company is duly qualified and authorized to transact business as a foreign organization in the states and countries set forth on Schedule A-5 and is in good standing, if applicable, in such states and countries. Applicant has provided Lender with true and correct copies for each Company of all certificates of existence and good standing from each jurisdiction where such Company is qualified to do business as listed on Schedule A-5.

6. Directors and Officers. Schedule A-6 sets forth for each Company a true and correct list of the names of its directors and names and titles of its executive officers (or, if the Company is not a corporation and does not have directors and executive officers of its own, the identification of such Company's general partner, managing member or other applicable entity with authority to act on behalf of such Company and a true and correct list of the names of the directors and names and titles of its executive officers of such entity).

7. Stock Ownership and Other Equity Interests. Schedule A-7 sets forth for each Company all stock, limited liability company membership interests, partnership interests, trust interests, options, warrants and other equity interests, whether or not evidenced by certificates or instruments, that are (a) owned by such Company or (b) issued by such Company and currently outstanding. Except as set forth on Schedule A-7, no Company is party to or bound by any subscription, voting trust, registration rights or other agreements relating to equity securities of such Company. Applicant has provided Lender with (i) true and correct copies of all agreements, documents, instruments and other writings listed (or governing or relating to any items listed) on Schedule A-7 and (ii) true and correct copies (front and back) of the certificates evidencing all certificated equity interests listed on Schedule A-7.

8. Board and Committee Meetings. Applicant has provided Lender with true and correct copies of all minutes of all meetings of the board of directors (or equivalent governing body) and each committee thereof of the Applicant (or written consents in lieu thereof) covering the last three years.

B. Real Property and Collateral Locations

1. Real Property Owned or Leased. Schedule B-1 sets forth for each Company (a) the location (including county and zip code) of all real property owned or

leased by such Company, (b) if such property is leased, the landlord and the term of the lease, (c) if such property is held in fee, the holder of any mortgage on such real property and (d) where such Company's chief executive office is located. The books and records of each Company pertaining to accounts, contract rights, inventory and other assets are located at such Company's chief executive office except as indicated on Schedule B-1. Applicant has provided Lender with true and correct copies of each of the following, as applicable, for all owned real property listed on Schedule B-1: (i) all leases and lease abstracts; (ii) all mortgages; (iii) all subordination and non-disturbance agreements; (iv) all title insurance reports and surveys; (v) all metes and bounds descriptions; (vi) all rights of way, easements or licenses necessary for delivery of utilities or access; (vii) all environmental audits and environmental remediation agreements; (viii) all structural or MEP inspection reports; (ix) all zoning letters and approvals; (x) all agreements with state or local governments relating to such real property (including, without limitation, tax abatements, payments in lieu of tax agreements or other concessions); (xi) all certificates of occupancy; (xii) evidence of any tax assessments; and (xiii) all construction documents, including plans and specifications, feasibility studies, construction contracts, construction management agreements and subcontracts. Applicant has provided Lender with true and correct copies of all leases and lease abstracts for all leased real property listed on Schedule B-1 and, to the extent applicable and available to the Company, any other items of the type referred to in the preceding sentence relating to such leased property.

2. Third Party Locations of Collateral. Schedule B-2 sets forth for each Company (a) the name of each Person that has or may have possession of, or that has possession of physical space containing, any inventory, equipment or other assets of such Company at any location other than those listed on Schedule B-1 that exceeds Twenty-Five Thousand dollars ($25,000) at any one location, (b) if the assets are valued at greater than $500,000, the location (including county and zip code) of such space, (c) the description and dollar value of the inventory, equipment or other assets of such Company at such location and (d) if the assets are valued at greater than $500,000, the type of agreement governing such relationship (*e.g.* warehouse, vendor, consignment, collocation, etc.) and the title, parties and date of such agreement. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule B-2.

3. Future Project Locations. Schedule B-3 sets forth for each Company (a) the location (including county and zip code) of all real property that such Company currently intends to use for purposes of each Project and whether such Company intends to own or lease such property, and (b) the current owner of each such property. Applicant has provided Lender with true and correct copies of each of the following, as applicable, for all real property listed on Schedule B-3: (i) all term sheets, proposals, letters of intent and agreements (or, if final versions do not yet exist, the latest drafts of such term sheets, proposals, letters of intent and agreements) and any other documents relating to any proposed acquisition or lease of such real property in existence as of the date hereof and shall provide Lender with any other term sheets, proposals, letters of

intent and agreements (or, if final versions do not then exist, the latest drafts of such term sheets, proposals, letters of intent and agreements) and other documents relating to such proposed acquisition or lease as they become available and (ii) any other items of the type referred to in Section B.1 above as and when they become available for each such property.

C. Information Regarding Certain Other Collateral

1. Cash; Accounts; Other Investment Property. Schedule C-1 sets forth for each Company (a) all cash, money, currency and all deposit accounts, including demand, time, savings, passbooks or similar accounts maintained with banks, savings and loan associations, or other financial institutions of such Company, (b) all securities accounts and commodity accounts (as each such term is defined in the UCC) and (c) all other investment property (as defined in the UCC) not otherwise set forth on another Schedule to this Information Certificate. Except as set forth on Schedule C-1, none of the cash or other investments in such accounts are subject to restrictions on withdrawal or use. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings governing or relating to any items listed on Schedule C-1 (other than standard terms and conditions relating to any deposit account, securities account or commodity account).

2. Promissory Notes; Instruments; Chattel Paper. Schedule C-2 sets forth for each Company all promissory notes, instruments and chattel paper held by or on behalf of, and all letters of credit issued in favor of, such Company. Applicant has provided Lender with true and correct copies of all promissory notes, instruments, chattel papers and letters of credit listed on Schedule C-2.

3. Intellectual Property. Schedule C-3 sets forth for each Company, to the extent owned by or licensed to such Company, in each case whether domestic or foreign and whether registered or unregistered: (a) all trademarks, service marks, trade names, logos or other business identifiers of like nature, all applications or recordings in respect thereof, (b) all letters patent, design patents and utility patents, all applications or recordings in respect thereof, (c) all copyrights and copyright registrations, all applications or recordings in respect thereof, (d) all Internet domain names, (e) a brief description of any material trade secrets and know-how (including all trade secrets and know-how material to the Companies' battery technology) and (f) all licenses or contracts in respect of any of the foregoing. Applicant has provided Lender with true and correct copies of all licenses, contracts, agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule C-3. Applicant has also provided Lender with (1) searches with respect to the registered or pending intellectual property of the Applicant in the United States Patent and Trademark Office and (2) a summary of each Company's policies and procedures with respect to the development and protection of intellectual property, including, without limitation, any so-called "clean room" procedures.

4. Vehicles and Other Titled Assets. Schedule C-4 sets forth for each Company (a) all of the motor vehicles (other than non-saleable prototypes not represented

by a certificate of title) valued in excess of $10,000 individually owned by such Company, identifying the unit and VIN numbers, the garaging city and the state and zip code where such vehicle is titled, any existing lienholders and the make, model and year of such vehicle and (b) all aircraft and boats, and all other inventory, equipment and other goods of the Company valued in excess of $10,000 in the aggregate which are subject to any certificate of title or other registration statute of the United States, any state or any other jurisdiction, describing such good and indicating the registration system and jurisdiction of such goods.

5. Commercial Tort Claims. Schedule C-5 sets forth for each Company a written summary in reasonable detail of all commercial tort claims (as defined in the UCC) of such Company.

6. Special Situations. Except as set forth on Schedule C-6 and described in reasonable detail thereon, none of the Companies: (a) is a transmitting utility (as defined in the UCC); (b) owns any "farm products" (as defined in the UCC); (c) owns any timber to be cut; (d) owns, leases or has an interest in any wellhead or minehead or owns any "as extracted collateral" (as defined in the UCC); (e) owns any receivables from the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign or is party to any contract pursuant to which such receivables may be generated; or (f) owns any other assets of a type in which a Lien may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation other than intellectual property or as disclosed on Schedule C-4.

D. Other Material Contracts and Liabilities

1. Sources and Uses of Funding; Project Documents. Schedule D-1 lists (a) all sources and uses of funding for each Project, including all equity and debt and the liability of parties associated with each Project, (b) all agreements and proposed agreements or arrangements with Daimler, including with respect to investments by Daimler in any Company and commitments to purchase products or services from any Company, and (c) all other material agreements that are necessary to be obtained for the success of each Project and for its operation on a stand-alone basis. Applicant has provided Lender with true and correct copies of all term sheets, proposals, letters of intent and agreements (or, if final versions do not yet exist, the latest drafts of such term sheets, proposals, letters of intent and agreements) and any other documents relating to any items listed on Schedule D-1 in existence as of the date hereof and shall provide Lender with any other term sheets, proposals, letters of intent and agreements (or, if final versions do not then exist, the latest drafts of such term sheets, proposals, letters of intent and agreements) and other documents relating to any items listed on Schedule D-1 as they become available.

2. Contracts with Customers and Suppliers. Schedule D-2 sets forth for each Company a list (indicating title, party, date and type) of each of the following agreements to which such Company is a party or by which it is bound: (a) representative samples of all agreements governing all deposits received and currently held from

customers for production of Roadsters or Model S vehicles (all existing agreements are substantially similar to the representative samples); (b) any other agreements with customers accounting for more than 5% of the Company's sales in its most recent three fiscal years or expected to account for more than 5% of the Company's sales in any of its next three fiscal years; (c) all agreements with Lotus; (d) any other material distribution agreements, supply agreements and processing agreements; (e) licensing and franchising agreements, whether as licensee or licensor or franchisee or franchisor; (f) advertising, affiliation and marketing agreements; and (g) outsourcing agreements. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-2.

3. Insurance. Schedule D-3 sets forth for each Company (a) a list and summary description of all insurance policies in force covering such Company, including all casualty, liability, business interruption and key life insurance policies, the policy period, and coverages; and (b) whether any material claims have been made thereunder and the status of such claims.

4. Indebtedness. Except for the equipment leases, equipment loans and other Indebtedness set forth on Schedule D-4, no Company has any Indebtedness. If applicable, Schedule D-4 identifies any Indebtedness that is intended to be paid off at the closing of the Loan Arrangement (together with an indication of whether any outstanding letters of credit will need to be replaced or collateralized in connection therewith).

5. Liens. Except as set forth on Schedule D-5, (a) none of the Indebtedness referred to above is secured by any Liens, (b) each Company's assets are owned and held free and clear of any Liens securing any other obligations other than immaterial Liens incurred in the ordinary course of business and (c) no financing statement, security agreement or other lien instrument or notice covering any assets of any Company, which such Company has authorized any other Person to sign or file or record, is on file or of record with any public office. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-5. Applicant has also provided Lender with (i) UCC and certain other searches (as identified in such search results) against Applicant (using each name identified for such Company in Schedules A-2, A-3 and A-4 hereto) in each jurisdiction where such Company is organized or incorporated, as applicable, and, if different, where its chief executive office is located and (ii) true and correct copies of each financing statement or other items identified in such search results.

6. Litigation Matters. Except as set forth on Schedule D-6 and described in reasonable detail thereon, (a) there are no litigations, arbitrations, investigations or other proceedings pending or threatened in writing by or against any Company, (b) no judgments, orders or decrees have been entered against any Company and (c) no Company is a party to or bound by any settlement agreement or forbearance agreement.

7. Employment and Labor Contracts. Schedule D-7 sets forth for each Company (i) a list of all employment, severance, retention, consulting and management agreements, all non-compete and non-solicitation agreements and all indemnification agreements or similar arrangements to which such Company is party with any past or present member, manager, officer, director, employee or consultant of such Company and (ii) a list of the people who are, in the Company's reasonable belief, key employees of the Company. Except as set forth on Schedule D-7 and described in reasonable detail thereon, no Company is or has been within the past two years (a) a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent or (b) subject to any labor disputes, strikes or work stoppages, requests for arbitration, grievance proceedings or union negotiations or organizational efforts. Schedule D-7 also sets forth a list of all past or present members, managers, officers, directors, employees and consultants (x) who have developed intellectual property on behalf of any Company and who have not executed an invention assignment agreement, (y) who have received access to intellectual property on behalf of any Company and who have not executed a confidentiality agreement or (z) who have been employed by any Company and have not executed a non-compete and non-solicitation agreement. Schedule D-7 also sets forth a written summary of the Companies' procedures for ensuring that all future members, managers, officers, directors, employees and consultants will execute invention assignment agreements and confidentiality, non-compete and non-solicitation agreements as applicable. Applicant has provided Lender with representative samples of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-7.

8. Employee Benefit Plans. Schedule D-8 sets forth for each Company a list of all employee benefit plans, programs and arrangements, including pension, retirement, deferred compensation, bonus, incentive, profit-sharing, change-in-control, stock option or other stock- or equity-related compensation, vacation, health and welfare benefits or insurance (including self-insured arrangements), workers' compensation, supplemental unemployment benefits, and other post employment benefits maintained, sponsored or contributed to by (or required to be contributed to by) such Company (collectively, "plans"). No such plan is subject to ERISA or Section 414 of the IRC, and no Company has any direct or indirect liability, whether contingent or otherwise, to the PBGC or to or in respect of any plan that is or was subject to Title IV of ERISA or Section 414 of the IRC. With respect to each plan listed on Schedule D-8, Applicant has provided Lender with true and correct copies, to the extent applicable, of (a) the plan document ; (b) related trust or other funding instruments; (c) the most recent Internal Revenue Service determination letter or opinion letter; (d) for the most recent year (i) annual reports on Form 5500 and (ii) actuarial valuation reports; and (e) all material correspondence with the IRS, Department of Labor, PBGC or other Governmental Authority regarding the operation or administration of such plan. With respect to stock options or warrants held by key employees listed on Schedule D-7, a description of the current status of the vesting schedule with respect to such options or warrants is set forth on Schedule D-8.

9. Environmental and Safety Matters. Except as set forth on Schedule D-9 and described in reasonable detail thereon, (a) each Company is in compliance in all material respects with all environmental and safety laws applicable to its business or operations and (b) there are no environmental or safety claims or investigations pending or threatened by any governmental agency with respect to any Company or any of its property.

10. Tax Matters. Except as set forth on Schedule D-10 and described in reasonable detail thereon, (a) there are no delinquent taxes or tax returns due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes), (b) no Company has received any notices of proposed, outstanding or assessed deficiencies or adjustments with respect to tax matters from any Governmental Authority and (c) no Company is a party to or bound by any tax sharing agreement. Applicant has provided Lender with true and correct copies of all notices and agreements, listed on Schedule D-10.

11. Permits and Other Regulatory Matters. Schedule D-11 sets forth a written summary of (a) an overview of any U.S. regulatory regimes that govern or are reasonably likely to govern the operations of the Companies as currently conducted or as contemplated to be conducted during and after completion of construction of the Projects as reflected in the business plans delivered to Lender, including any state laws governing ownership and operation of car dealers, any truth in advertising laws, any laws governing consumer finance, any laws governing product warranties and any other consumer protection laws, and (b) any other agreements or other arrangements with any Governmental Authority relating to incentives, including the agreement entered into by the Company and the State of California in June 2008. Except as set forth on Schedule D-11 and described in reasonable detail thereon, (i) no permits, licenses, authorizations, approvals, entitlements or accreditations from any Governmental Authority (collectively, "permits") are required for any Company to own, manage or operate its business and assets as currently owned, managed or operated or as may be necessary or appropriate for the construction and operation of the Projects, (ii) no Company is (or will become as a result of the Projects) required to be registered with any Governmental Authority, (iii) no Company has incurred any unpaid liability under the Worker Adjustment and Retraining Notification Act or similar state law, (iv) each Company is in compliance in all material respects with all laws and regulations applicable to its business or operations and (v) no Company has received any notice of non-compliance from any Governmental Authority within the past three years. Applicant has provided Lender with true and correct copies of all agreements, permits, documents, and notices listed on Schedule D-11.

12. Intercompany Arrangements. Schedule D-12 sets forth for each Company (a) all outstanding intercompany loans or advances made by or to any other Company (and any intercompany agreements to make any loans or advances in the future), (b) all unpaid intercompany transfers of goods or services sold and delivered or rendered by or to any other Company (and any intercompany agreements to sell or render any good or services in the future) and (c) all other intercompany arrangements (including guarantees by any Company of any obligations of any other Company).

Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-12.

13. Transactions with Affiliates. Except as set forth on Schedule D-13, no Company is party to or bound by any agreement or other arrangement with any of its present or former stockholders, directors, members, managers or officers or Affiliates (other than any other Company) that is not otherwise set forth on any other Schedule to this Information Certificate and referenced in Schedule D-13. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-13.

14. Correspondence with Auditors. Applicant has provided Lender with true and correct copies of each of the following documents relating to the Companies' audit examinations (each of which is listed on Schedule D-14): (i) all letters from the Companies' attorneys to the Companies' auditors in the past three years; (ii) all formal correspondence from any Company to the Companies' auditors in the past three years regarding representations requested by such auditors in connection with their audit of the Companies; and (iii) all reports or other correspondence from such auditors to any Company (or its board of directors or equivalent governing body or any committee thereof) for the past three years.

15. Other Material Contracts. Schedule D-15 sets forth for each Company a list (indicating title, party, date and type) of each of the following agreements to which such Company is a party or by which it is bound that is material to such Company and that is not otherwise set forth on any other Schedule to this Information Certificate: (a) indemnification agreements; (b) joint venture agreements; (c) credit card processing agreements; (d) leases of personal property; and (e) any other Material Contracts. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings listed (or governing or relating to any items listed) on Schedule D-15.

E. Additional Certifications

1. Completeness of Information Presented. Except as set forth in the Schedules described above or on Schedule E-1 and described in reasonable detail thereon, (a) no Company owns any material assets or has any material liabilities, (b) no Company has been in significant discussions with any other Person or engaged in any significant planning or testing with respect to any business product or project that are currently ongoing other than the Projects and (c) no Company knows of any anticipated change in any of the circumstances or with respect to any of the matters contemplated in any of the other sections of this Information Certificate, except as contemplated herein. Applicant has provided Lender with true and correct copies of all agreements, documents, instruments, notices and other writings governing or relating to any items listed on Schedule E-1.

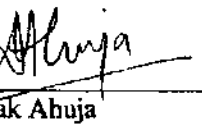
2. Due Authorization; No Defaults or Consents. The execution, delivery and performance by Applicant of the Term Sheet and this Information Certificate have been duly authorized by all necessary corporate or other organizational action on the part of Applicant and no consent of any equityholder of Applicant or any other Person is required therefor except to the extent that the same has been obtained. As of the date of this Information Certificate, except as set forth in the applicable Schedule or on Schedule E-2 and described in reasonable detail thereon, (a) each agreement, document, instrument, permit or arrangement listed on any Schedule to this Information Certificate is in full force and effect and has not been amended, modified, supplemented or waived; (b) no Company is default thereunder and, to Applicant's knowledge, no other party thereto is in default thereunder; and (c) no consent is required thereunder, under applicable law or under the organizational documents of any Company for any Company to enter into the Loan Arrangement, to borrow or provide a guaranty thereunder, to mortgage, pledge or create a security interest in any assets of such Company or to use the proceeds of the Loan Arrangement for their intended use.

3. Consistency with Application. The assumptions underlying Applicant's forecasts and business plans as amended and restated as of January 14, 2010 and delivered to Lender are consistent in all material respects with the information set forth in Applicant's application for the Loan Arrangement as amended and restated as of May 4, 2009 and delivered to Lender. The information set forth in such application is consistent in all material respects with the information set forth in or delivered to Lender pursuant to this Information Certificate.

4. Acknowledgment. Applicant acknowledges that this Information Certificate is provided in connection with the Loan Arrangement and that the Lender will rely upon the information contained herein. Applicant further acknowledges and agrees that the information contained herein shall be deemed to be a representation and warranty under the Loan Arrangement, and that any material misstatements or material omissions contained herein shall constitute a default under the Loan Arrangement. Under penalty of perjury, Applicant declares that it has examined this Information Certificate and, to the best of its knowledge and belief, this Information Certificate is true, correct and complete.

IN WITNESS WHEREOF, Applicant has executed this Information Certificate as of January 10, 2010.

TESLA MOTORS, INC.

By: 

Name: Deepak Ahuja
Title: Chief Financial Officer

ANNEX A

Certain Defined Terms

As used in this Information Certificate, the following terms have the following meanings:

"Affiliate" means, as applied to any Person, (x) any other Person directly or indirectly controlling, controlled by, or under common control with, that Person and (y) in addition, in the case of any Person that is an individual, each member of such Person's immediate family, any trusts or other entities established for the benefit of such Person or any member of such Person's immediate family and any other Person controlled by any of the foregoing. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"ERISA" means Title IV of the Employee Retirement Income Security Act of 1974, as amended.

"Governmental Authority" means, with respect to any Person, any federal, state, municipal, national or other government, any political subdivision, department, commission, board, bureau, agency or instrumentality thereof, any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Indebtedness" means any liability, whether or not contingent,

(a) in respect of borrowed money (whether by loan, the issuance and sale of debt securities or the sale of assets to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such assets from such Person, in each case whether or not the recourse of the lender or purchaser is to the whole of the assets of such Company or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments;

(b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an affiliate) created, incurred, assumed or guaranteed by such Company in the ordinary course of business of such Company in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith);

(c) all obligations as lessee under leases which have been, or should be, in accordance with generally accepted accounting principles recorded as capital leases;

(d) any contractual obligation, contingent or otherwise, of such Company to pay or be liable for the payment of any Indebtedness or other obligations of another Person, including, without limitation, any such Indebtedness or other obligations, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such Indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition;

(e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any capital stock or other equity securities issued by such Company; all reimbursement obligations and other liabilities of such Company with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Company's account;

(f) all indebtedness of such Company in respect of Indebtedness of another Person for borrowed money or Indebtedness or obligations of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Company, whether or not such Indebtedness or obligations are assumed by or are a personal liability of such Company, all as of such time;

(g) all obligations, liabilities and indebtedness of such Company (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect it against fluctuations in interest rates or currency or commodity values;

(h) all obligations owed by such Company under license agreements with respect to non-refundable, advance or minimum guarantee royalty payments;

(i) the principal and interest portions of all rental obligations of such Company under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with generally accepted accounting principles;

(j) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets of such Person; and

(k) indebtedness of general partnerships of which such Person is a general partner unless the terms of such indebtedness expressly provide that such Person is not liable therefor.

"IRC" means the Internal Revenue Code of 1986, as amended.

"Lien" means (i) any lien, mortgage, pledge, assignment, license, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Material Contract" means, with respect to any Company, any contract or other agreement, written or oral, of such Company involving monetary liability of or to any party thereto in an amount in excess of $100,000 in any fiscal year and any other contract or other agreement, whether written or oral, to which such Company is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would reasonably be expected to have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of such Company or the intended use of the proceeds of the Loan Arrangement or the validity or enforceability of any agreements of such Company with Lender or any of the rights and remedies of Lender under any of such agreements.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Projects" means the proposed projects to be financed in part with the proceeds of the Loan Arrangement as contemplated by the Term Sheet.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with United States generally accepted accounting principles as of such date, as well as any other corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Term Sheet" means that certain term sheet of even date herewith entered into by Applicant and Lender in connection with the proposed Loan Arrangement.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

EXECUTION COPY

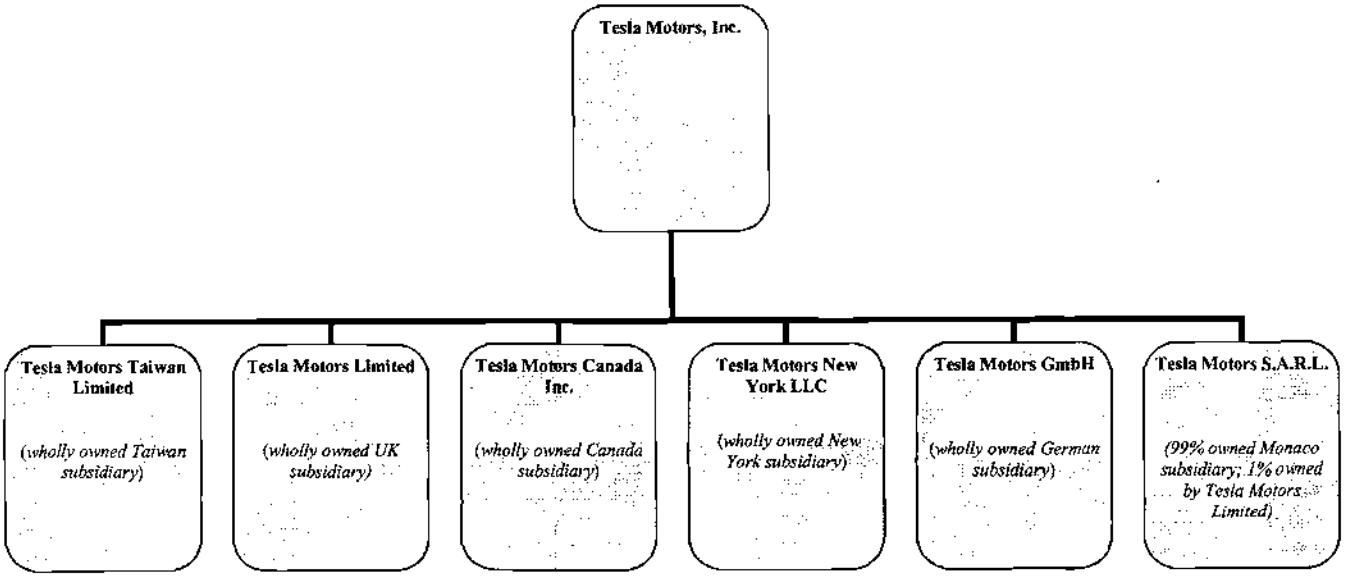
SCHEDULES TO
TESLA MOTORS, INC.
INFORMATION CERTIFICATE

Dated as of January 20, 2010

SCHEDULE A-1
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Organizational Structure Chart

(a) Names and Ownership Relationship



See capitalization table as of January 13, 2010 attached to Schedule A-7 for a list of holders of voting and equity interests in the Applicant.

(b) Business Descriptions

- Tesla Motors, Inc. – production of high-end electric vehicles and powertrains
- Tesla Motors Taiwan Limited – manufactures electric motors
- Tesla Motors Limited – production of glider (U.S. vehicles), full vehicles (EU vehicles) and engineering services
- Tesla Motors GmbH – facilitates European Union sales
- Tesla Motors New York LLC – will act as Tesla Motors, Inc.'s franchised dealer in New York
- Tesla Motors Canada Inc. – facilitates Canada sales
- Tesla Motors S.A.R.L. – facilitates Monaco, France and Italy sales

SCHEDULE A-2
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Company Identification

Full Legal Name	Type of Organization	Jurisdiction of Organization	Federal Employer ID Number	Organizational Identification Number
Tesla Motors, Inc.	Corporation	Delaware	91-2197729	3677166
Tesla Motors Taiwan Limited	Taiwan Limited Company	Taiwan	None	None
Tesla Motors Limited	United Kingdom Private Limited Company	United Kingdom	None	4384008
Tesla Motors GmbH	German Company with Limited Liability	Germany	None	HRB 176524 (Commercial Register of the Local Court of Munich (Amstgericht Munchen))
Tesla Motors New York LLC	New York Limited Liability Company	New York	27-1077991	None
Tesla Motors Canada Inc.	Canada Corporation	Canada (Ontario)	None	720711-5
Tesla Motors S.A.R.L.	Monaco Limited Liability Company	Monaco	None	None

SCHEDULE A-3
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Other Names

Company	Trade Name or Fictitious Business Name
Tesla Motors, Inc.	None
Tesla Motors Limited	None
Tesla Motors Taiwan Limited	None
Tesla Motors Canada Inc.	None
Tesla Motors New York LLC	None
Tesla Motors GmbH	None
Tesla Motors S.A.R.L.	None

SCHEDULE A-4
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Fundamental Changes

Tesla Motors, Inc.

Date	Description of Fundamental Change	Information of Predecessor/Seller
February 1, 2005	Stock Acquisition	Tesla Motors, Inc. acquired all 100 shares of Sygnet Design Limited
April 16, 2009	Sale and Transfer of Shares	Tesla Motors, Inc. acquired all 25,000 shares of AB 29/08 Vermogensverwaltungs GmbH

Tesla Motors Limited

Date	Description of Fundamental Change	Information of Predecessor/Seller
February 1, 2005	Name Change	Name change from Sygnet Design Limited to Tesla Motors Limited

Tesla Motors GmbH

Date	Description of Fundamental Change	Information of Predecessor/Seller
April 16, 2009	Name Change	Name change from AB 29/08 Vermogensverwaltungs GmbH to Tesla Motors GmbH

Tesla Motors Taiwan Limited

Date	Description of Fundamental Change	Information of Predecessor/Seller
To be filed	Dissolution Request	Dissolution and liquidation documents to terminate, dissolve, liquidate, and close the business effective in 2010

Tesla Motors Canada Inc.

- None

Tesla Motors New York LLC

- None

Tesla Motors S.A.R.L.

- None

SCHEDULE A-5
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Foreign Qualifications

Company	Jurisdictions
Tesla Motors, Inc.	California Colorado Florida Illinois New York Washington
Tesla Motors Limited	None
Tesla Motors Taiwan Limited	None
Tesla Motors GmbH	None
Tesla Motors New York LLC	None
Tesla Motors Canada Inc.	None
Tesla Motors S.A.R.L.	None

SCHEDULE A-6
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Directors and Officers

Company	Directors	Officer Titles	Officer Names
Tesla Motors, Inc.	Elon Musk (Chairman) Kimbal Musk Ira Ehrenpreis Antonio Gracias Herbert Kohler Steve Jurvetson Brad Buss H.E. Ahmed Saif Al Darmaki	Chief Executive Officer Chief Financial Officer Assistant Secretary VP, Business Development VP, U.S. Sales, Marketing and Service Chief Technology Officer VP, Communications VP, Human Resources	Elon Musk Deepak Ahuja Craig Harding Diarmuid O'Connell John Walker JB Straubel Ricardo Reyes Arnnon Geshuri
Tesla Motors Taiwan Limited	Elon Musk Deepak Ahuja	None	None
Tesla Motors Limited	Michael Taylor Craig Harding Don Cochrane	Secretary	Craig Harding
Tesla Motors GmbH	None.	Geschaftsfuhrer Geschaftsfuhrer	Deepak Ahuja Craig Davis
Tesla Motors Canada Inc.	Elon Musk Deepak Ahuja Jeffrey Slopen	President Secretary	Elon Musk Craig Harding

Company	Directors	Officer Titles	Officer Names
Tesla Motors New York LLC	None	President Treasurer Secretary	Don Thompson Matthew Farrell Craig Harding
Tesla Motors S.A.R.L.	None	Gerant	Simon Rochefort

SCHEDULE A-7
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Stock Ownership and Other Equity Interests

(a) Owned Stock

Company (Owner)	Stock Issuer	Class of Stock	Certificated (Y/N)	Certificate No.	Par Value	No. of Owned Shares	% of Class Outstanding
[redacted]							

(b) Issued Stock

- See attached capitalization table as of January 13, 2010.

(c) Subscription, Voting Trust, Registration Rights and Other Equity Interests

- Third Amended and Restated Right of First Refusal and Co-Sale Agreement by and among Tesla Motors, Inc., holders of at least [redacted] shares of Series A Preferred Stock of Tesla Motors, Inc. listed on Exhibit A thereto, holders of at least [redacted] shares of Series B Preferred Stock of Tesla Motors, Inc. listed on Exhibit B thereto, holders of at least [redacted] shares of Series C Preferred Stock of Tesla Motors, Inc. listed on Exhibit C thereto and holders of at least [redacted] shares of Series D Preferred Stock of Tesla Motors, Inc. listed on Exhibit D thereto, dated as of May 9, 2007, as amended September 2007.
- Fifth Amended and Restated Investors' Rights Agreement by and among Tesla Motors, Inc., Series A stockholders listed on Exhibit A thereto, Series B stockholders listed on Exhibit B thereto, Series C stockholders listed on Exhibit C thereto, Series D stockholders listed on Exhibit D thereto, Series E stockholders listed on Exhibit E thereto and Series F stockholders listed on Exhibit F thereto, dated as of August 31, 2009.
- Amended and Restated Right of First Refusal Agreement by and among Tesla Motors, Inc., holders of at least [redacted] shares of Series A Preferred Stock of Tesla Motors, Inc. listed on Exhibit A thereto, holders of at least [redacted] shares of Series B Preferred Stock of Tesla Motors, Inc. listed on Exhibit B thereto, holders of at least [redacted] shares of Series C Preferred Stock of Tesla Motors, Inc. listed on Exhibit C thereto, holders of at least [redacted] shares of Series D Preferred Stock of Tesla Motors, Inc. listed on Exhibit D thereto, holders of at least [redacted] shares of Series E Preferred Stock of Tesla Motors, Inc. listed on Exhibit E thereto and holders of at least [redacted] shares of Series F Preferred Stock of Tesla Motors, Inc. listed on Exhibit F thereto, dated as of August 31, 2009.
- Fifth Amended and Restated Voting Rights Agreement by and among Tesla Motors, Inc., holders of shares of Series A Preferred Stock, listed on Exhibit A thereto, holders of shares of Series B Preferred Stock, listed on Exhibit B thereto, holders of shares of Series C Preferred Stock, listed on Exhibit C thereto, holders of shares of Series D Preferred Stock, listed on Exhibit D thereto, holders of shares of Series E Preferred Stock, listed on Exhibit E thereto, holders of shares of Series F Preferred Stock, listed on Exhibit F thereto and holders of shares of Common Stock, listed on Exhibit F thereto, dated as of August 11, 2009.
- Letter Agreement Re: Restrictions on Share Transfer; Certain Voting Restrictions by and between the Elon Musk Revocable Trust dated July 22, 2003 and Blackstar Investco LLC, dated as of May 11, 2009. *While the Applicant is not party to this Agreement, it is a material contract with respect to the Applicant's stock.
- Side Agreement by and between Tesla Motors, Inc. and Blackstar Investco LLC, dated as of May 11, 2009.

- Exclusivity and Intellectual Property Agreement by and between Tesla Motors, Inc. and Daimler North America Corporation, dated as of May 11, 2009.
- Warrants to purchase [redacted] shares of the Applicant's Series C Preferred Stock.
- Warrants to purchase [redacted] shares of the Applicant's Series E Preferred Stock.
- Options to purchase shares of the Applicant's common stock (*See* Schedule D-8)

ATTACHMENT TO SCHEDULE A-7
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Capitalization Table

Tesla Motors, Inc.
SUMMARY CAPITALIZATION

Stock	Conversion Ratio	Authorized	Shares Outstanding	Shares Outstanding As Converted	% Owned On As Converted Basis	Shares Outstanding Fully Diluted	% Owned On Fully Diluted Basis
STOCK							
COMMON STOCK							
PREFERRED STOCK							
SERIES A PREFERRED STOCK							
SERIES B PREFERRED STOCK							
SERIES C PREFERRED STOCK							
SERIES D PREFERRED STOCK							
SERIES E PREFERRED STOCK							
SERIES F PREFERRED STOCK							
Total Stock :							
RIGHTS TO ACQUIRE STOCK:							
2003 Equity Incentive Plan							
Options Outstanding							
Options Available							
Plan Total :							
Non Plan Option Grants							
Options Outstanding							
Options Available							
Plan Total :							
WARRANTS TO PURCHASE:							
SERIES C PREFERRED STOCK							
SERIES E PREFERRED STOCK							
Total Rights:							
Total Diluted Shares:							

Footnotes:

NOTE: This report assumes that all plans involve securities with a 1.1 conversion rate to common stock.

Tesla Motors, Inc.
(List of All Current Shareholders - By Percent Owned)

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	34.8628
	All (As if converted)		9.6447
	All (As if converted)		9.4143
	All (As if converted)		8.9952
	All (As if converted)		6.7161
	All (As if converted)		2.2493
	All (As if converted)		0.0222
	All (As if converted)		0.0075
	All (As if converted)		6.3032
	All (As if converted)		3.5568
	All (As if converted)		2.5705
	All (As if converted)		0.1759
	All (As if converted)		3.5671
	All (As if converted)		2.2374
	All (As if converted)		1.0811
	All (As if converted)		0.1989
	All (As if converted)		0.0497
	All (As if converted)		3.5147
	All (As if converted)		3.4080
	All (As if converted)		3.2099
	All (As if converted)		2.7282
	All (As if converted)		1.8177
	All (As if converted)		1.4656
	All (As if converted)		1.3731
	All (As if converted)		1.1622
	All (As if converted)		0.8822
	All (As if converted)		0.5313
	All (As if converted)		0.4954
	All (As if converted)		0.4392
	All (As if converted)		0.4392
	All (As if converted)		0.4185
	All (As if converted)		0.3525
	All (As if converted)		0.2617
	All (As if converted)		0.2325
	All (As if converted)		0.2302
	All (As if converted)		0.2199
	All (As if converted)		0.1989
	All (As if converted)		0.1508
	All (As if converted)		0.1349
	All (As if converted)		0.1204
	All (As if converted)		0.1187
	All (As if converted)		0.1174
	All (As if converted)		0.1111
	All (As if converted)		0.1098
	All (As if converted)		0.1081

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	0.1040
	All (As if converted)		0.1018
	All (As if converted)		0.1000
	All (As if converted)		0.0995
	All (As if converted)		0.0752
	All (As if converted)		0.0376
	All (As if converted)		0.0376
	All (As if converted)		0.0654
	All (As if converted)		0.0624
	All (As if converted)		0.0587
	All (As if converted)		0.0573
	All (As if converted)		0.0546
	All (As if converted)		0.0544
	All (As if converted)		0.0484
	All (As if converted)		0.0482
	All (As if converted)		0.0430
	All (As if converted)		0.0430
	All (As if converted)		0.0403
	All (As if converted)		0.0398
	All (As if converted)		0.0398
	All (As if converted)		0.0369
	All (As if converted)		0.0349
	All (As if converted)		0.0323
	All (As if converted)		0.0312
	All (As if converted)		0.0289
	All (As if converted)		0.0289
	All (As if converted)		0.0289
	All (As if converted)		0.0278
	All (As if converted)		0.0276
	All (As if converted)		0.0274
	All (As if converted)		0.0264
	All (As if converted)		0.0243
	All (As if converted)		0.0237
	All (As if converted)		0.0228
	All (As if converted)		0.0226
	All (As if converted)		0.0215
	All (As if converted)		0.0215
	All (As if converted)		0.0215
	All (As if converted)		0.0215
	All (As if converted)		0.0215
	All (As if converted)		0.0207
	All (As if converted)		0.0199
	All (As if converted)		0.0194
	All (As if converted)		0.0192
	All (As if converted)		0.0190
	All (As if converted)		0.0188
	All (As if converted)		0.0183

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	0.0179
	All (As if converted)		0.0176
	All (As if converted)		0.0176
	All (As if converted)		0.0176
	All (As if converted)		0.0176
	All (As if converted)		0.0176
	All (As if converted)		0.0175
	All (As if converted)		0.0174
	All (As if converted)		0.0174
	All (As if converted)		0.0169
	All (As if converted)		0.0160
	All (As if converted)		0.0159
	All (As if converted)		0.0159
	All (As if converted)		0.0153
	All (As if converted)		0.0151
	All (As if converted)		0.0145
	All (As if converted)		0.0145
	All (As if converted)		0.0140
	All (As if converted)		0.0129
	All (As if converted)		0.0129
	All (As if converted)		0.0129
	All (As if converted)		0.0128
	All (As if converted)		0.0120
	All (As if converted)		0.0119
	All (As if converted)		0.0119
	All (As if converted)		0.0118
	All (As if converted)		0.0118
	All (As if converted)		0.0113
	All (As if converted)		0.0113
	All (As if converted)		0.0113
	All (As if converted)		0.0108
	All (As if converted)		0.0108
	All (As if converted)		0.0108
	All (As if converted)		0.0108
	All (As if converted)		0.0105
	All (As if converted)		0.0099
	All (As if converted)		0.0099
	All (As if converted)		0.0099
	All (As if converted)		0.0097
	All (As if converted)		0.0097
	All (As if converted)		0.0095
	All (As if converted)		0.0095
	All (As if converted)		0.0092
	All (As if converted)		0.0090
	All (As if converted)		0.0089
	All (As if converted)		0.0089
	All (As if converted)		0.0087
	All (As if converted)		0.0087
	All (As if converted)		0.0087

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	0.0086
	All (As if converted)		0.0086
	All (As if converted)		0.0086
	All (As if converted)		0.0080
	All (As if converted)		0.0077
	All (As if converted)		0.0077
	All (As if converted)		0.0076
	All (As if converted)		0.0074
	All (As if converted)		0.0073
	All (As if converted)		0.0071
	All (As if converted)		0.0069
	All (As if converted)		0.0065
	All (As if converted)		0.0065
	All (As if converted)		0.0065
	All (As if converted)		0.0065
	All (As if converted)		0.0065
	All (As if converted)		0.0063
	All (As if converted)		0.0063
	All (As if converted)		0.0061
	All (As if converted)		0.0060
	All (As if converted)		0.0060
	All (As if converted)		0.0060
	All (As if converted)		0.0058
	All (As if converted)		0.0057
	All (As if converted)		0.0054
	All (As if converted)		0.0053
	All (As if converted)		0.0052
	All (As if converted)		0.0052
	All (As if converted)		0.0052
	All (As if converted)		0.0052
	All (As if converted)		0.0052
	All (As if converted)		0.0051
	All (As if converted)		0.0051
	All (As if converted)		0.0050
	All (As if converted)		0.0048
	All (As if converted)		0.0047
	All (As if converted)		0.0046
	All (As if converted)		0.0045
	All (As if converted)		0.0044
	All (As if converted)		0.0044
	All (As if converted)		0.0044
	All (As if converted)		0.0043
	All (As if converted)		0.0043
	All (As if converted)		0.0043
	All (As if converted)		0.0043
	All (As if converted)		0.0043
	All (As if converted)		0.0040
	All (As if converted)		0.0040
	All (As if converted)		0.0039
	All (As if converted)		0.0039

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	0.0039
	All (As if converted)		0.0037
	All (As if converted)		0.0036
	All (As if converted)		0.0036
	All (As if converted)		0.0035
	All (As if converted)		0.0034
	All (As if converted)		0.0034
	All (As if converted)		0.0034
	All (As if converted)		0.0032
	All (As if converted)		0.0032
	All (As if converted)		0.0032
	All (As if converted)		0.0032
	All (As if converted)		0.0030
	All (As if converted)		0.0030
	All (As if converted)		0.0029
	All (As if converted)		0.0029
	All (As if converted)		0.0029
	All (As if converted)		0.0029
	All (As if converted)		0.0029
	All (As if converted)		0.0029
	All (As if converted)		0.0028
	All (As if converted)		0.0028
	All (As if converted)		0.0027
	All (As if converted)		0.0027
	All (As if converted)		0.0027
	All (As if converted)		0.0026
	All (As if converted)		0.0026
	All (As if converted)		0.0026
	All (As if converted)		0.0026
	All (As if converted)		0.0025
	All (As if converted)		0.0025
	All (As if converted)		0.0024
	All (As if converted)		0.0023
	All (As if converted)		0.0023
	All (As if converted)		0.0022
	All (As if converted)		0.0022
	All (As if converted)		0.0022
	All (As if converted)		0.0022
	All (As if converted)		0.0021
	All (As if converted)		0.0019
	All (As if converted)		0.0018
	All (As if converted)		0.0018
	All (As if converted)		0.0017
	All (As if converted)		0.0016
	All (As if converted)		0.0016
	All (As if converted)		0.0016
	All (As if converted)		0.0016
	All (As if converted)		0.0015
	All (As if converted)		0.0015
	All (As if converted)		0.0015

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All (As if converted)	[redacted]	0.0013
	All (As if converted)		0.0013
	All (As if converted)		0.0013
	All (As if converted)		0.0011
	All (As if converted)		0.0011
	All (As if converted)		0.0011
	All (As if converted)		0.0011
	All (As if converted)		0.0010
	All (As if converted)		0.0010
	All (As if converted)		0.0009
	All (As if converted)		0.0009
	All (As if converted)		0.0006
	All (As if converted)		0.0005
	All (As if converted)		0.0005
	All (As if converted)		0.0004
	All (As if converted)		0.0004
	All (As if converted)		0.0003
	All (As if converted)		0.0002
	All (As if converted)		0.0002
	All (As if converted)		0.0002
	All (As if converted)		0.0000
	All (As if converted)		0.0000
	All (As if converted)		0.0000
No. of Shareholders: 260	**All (As if converted)**		**100.0000**
[redacted]	All Preferred (As if converted)		34.6818
	All Preferred (As if converted)		10.6451
	All Preferred (As if converted)		10.3908
	All Preferred (As if converted)		9.9164
	All Preferred (As if converted)		7.4128
	All Preferred (As if converted)		2.4791
	All Preferred (As if converted)		0.0245
	All Preferred (As if converted)		6.9570
	All Preferred (As if converted)		3.9257
	All Preferred (As if converted)		2.8372
	All Preferred (As if converted)		0.1942
	All Preferred (As if converted)		3.9371
	All Preferred (As if converted)		2.4694
	All Preferred (As if converted)		1.1932
	All Preferred (As if converted)		0.2195
	All Preferred (As if converted)		0.0549
	All Preferred (As if converted)		3.8793
	All Preferred (As if converted)		3.7615
	All Preferred (As if converted)		3.0838
	All Preferred (As if converted)		3.0112
	All Preferred (As if converted)		1.5986
	All Preferred (As if converted)		1.2828

Tesla Motors, Inc.
(List of All Current Shareholders - By Percent Owned)

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All Preferred (As if converted)	[redacted]	0.9737
	All Preferred (As if converted)		0.5389
	All Preferred (As if converted)		0.4848
	All Preferred (As if converted)		0.4848
	All Preferred (As if converted)		0.4619
	All Preferred (As if converted)		0.3890
	All Preferred (As if converted)		0.2888
	All Preferred (As if converted)		0.2541
	All Preferred (As if converted)		0.2427
	All Preferred (As if converted)		0.2196
	All Preferred (As if converted)		0.1489
	All Preferred (As if converted)		0.1329
	All Preferred (As if converted)		0.1310
	All Preferred (As if converted)		0.1296
	All Preferred (As if converted)		0.1226
	All Preferred (As if converted)		0.1212
	All Preferred (As if converted)		0.1193
	All Preferred (As if converted)		0.1104
	All Preferred (As if converted)		0.1098
	All Preferred (As if converted)		0.0915
	All Preferred (As if converted)		0.0915
	All Preferred (As if converted)		0.0830
	All Preferred (As if converted)		0.0415
	All Preferred (As if converted)		0.0415
	All Preferred (As if converted)		0.0722
	All Preferred (As if converted)		0.0715
	All Preferred (As if converted)		0.0674
	All Preferred (As if converted)		0.0532
	All Preferred (As if converted)		0.0508
	All Preferred (As if converted)		0.0481
	All Preferred (As if converted)		0.0439
	All Preferred (As if converted)		0.0439
	All Preferred (As if converted)		0.0407
	All Preferred (As if converted)		0.0344
	All Preferred (As if converted)		0.0319
	All Preferred (As if converted)		0.0319
	All Preferred (As if converted)		0.0319
	All Preferred (As if converted)		0.0305
	All Preferred (As if converted)		0.0291
	All Preferred (As if converted)		0.0237
	All Preferred (As if converted)		0.0220
	All Preferred (As if converted)		0.0195
	All Preferred (As if converted)		0.0195
	All Preferred (As if converted)		0.0195
	All Preferred (As if converted)		0.0195

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	All Preferred (As if converted)	[redacted]	0.0195
	All Preferred (As if converted)		0.0195
	All Preferred (As if converted)		0.0193
	All Preferred (As if converted)		0.0193
	All Preferred (As if converted)		0.0193
	All Preferred (As if converted)		0.0176
	All Preferred (As if converted)		0.0160
	All Preferred (As if converted)		0.0159
	All Preferred (As if converted)		0.0132
	All Preferred (As if converted)		0.0132
	All Preferred (As if converted)		0.0128
	All Preferred (As if converted)		0.0119
	All Preferred (As if converted)		0.0119
	All Preferred (As if converted)		0.0110
	All Preferred (As if converted)		0.0110
	All Preferred (As if converted)		0.0102
	All Preferred (As if converted)		0.0096
	All Preferred (As if converted)		0.0096
	All Preferred (As if converted)		0.0095
	All Preferred (As if converted)		0.0074
	All Preferred (As if converted)		0.0066
	All Preferred (As if converted)		0.0048
	All Preferred (As if converted)		0.0048
	All Preferred (As if converted)		0.0048
	All Preferred (As if converted)		0.0032
	All Preferred (As if converted)		0.0032
	All Preferred (As if converted)		0.0029
	All Preferred (As if converted)		0.0026
	All Preferred (As if converted)		0.0024
	All Preferred (As if converted)		0.0024
	All Preferred (As if converted)		0.0024
	All Preferred (As if converted)		0.0019
No. of Shareholders: 95	**All Preferred (As if converted)**		**100.0000**
[redacted]	COMMON STOCK	[redacted]	36.6084
	COMMON STOCK		18.4598
	COMMON STOCK		13.7282
	COMMON STOCK		5.1481
	COMMON STOCK		4.4257
	COMMON STOCK		2.2880
	COMMON STOCK		1.0830
	COMMON STOCK		0.9152
	COMMON STOCK		0.6636
	COMMON STOCK		0.6244
	COMMON STOCK		0.6095
	COMMON STOCK		0.5148
	COMMON STOCK		0.4576
	COMMON STOCK		0.4576

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	COMMON STOCK	[redacted]	0.4576
	COMMON STOCK		0.4576
	COMMON STOCK		0.4290
	COMMON STOCK		0.3718
	COMMON STOCK		0.3432
	COMMON STOCK		0.2955
	COMMON STOCK		0.2919
	COMMON STOCK		0.2590
	COMMON STOCK		0.2517
	COMMON STOCK		0.2402
	COMMON STOCK		0.2288
	COMMON STOCK		0.2288
	COMMON STOCK		0.2288
	COMMON STOCK		0.2288
	COMMON STOCK		0.2202
	COMMON STOCK		0.2059
	COMMON STOCK		0.2045
	COMMON STOCK		0.2024
	COMMON STOCK		0.2002
	COMMON STOCK		0.1945
	COMMON STOCK		0.1907
	COMMON STOCK		0.1859
	COMMON STOCK		0.1833
	COMMON STOCK		0.1802
	COMMON STOCK		0.1700
	COMMON STOCK		0.1697
	COMMON STOCK		0.1610
	COMMON STOCK		0.1487
	COMMON STOCK		0.1373
	COMMON STOCK		0.1373
	COMMON STOCK		0.1373
	COMMON STOCK		0.1363
	COMMON STOCK		0.1281
	COMMON STOCK		0.1259
	COMMON STOCK		0.1258
	COMMON STOCK		0.1201
	COMMON STOCK		0.1201
	COMMON STOCK		0.1144
	COMMON STOCK		0.1144
	COMMON STOCK		0.1144
	COMMON STOCK		0.1144
	COMMON STOCK		0.1134
	COMMON STOCK		0.0801
	COMMON STOCK		0.0334
	COMMON STOCK		0.1058
	COMMON STOCK		0.1035
	COMMON STOCK		0.1030
	COMMON STOCK		0.1013
	COMMON STOCK		0.1009
	COMMON STOCK		0.0971

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	COMMON STOCK	[redacted]	0.0958
	COMMON STOCK		0.0944
	COMMON STOCK		0.0944
	COMMON STOCK		0.0929
	COMMON STOCK		0.0915
	COMMON STOCK		0.0915
	COMMON STOCK		0.0915
	COMMON STOCK		0.0855
	COMMON STOCK		0.0824
	COMMON STOCK		0.0824
	COMMON STOCK		0.0772
	COMMON STOCK		0.0755
	COMMON STOCK		0.0734
	COMMON STOCK		0.0690
	COMMON STOCK		0.0686
	COMMON STOCK		0.0686
	COMMON STOCK		0.0686
	COMMON STOCK		0.0686
	COMMON STOCK		0.0671
	COMMON STOCK		0.0667
	COMMON STOCK		0.0650
	COMMON STOCK		0.0635
	COMMON STOCK		0.0634
	COMMON STOCK		0.0620
	COMMON STOCK		0.0618
	COMMON STOCK		0.0610
	COMMON STOCK		0.0572
	COMMON STOCK		0.0564
	COMMON STOCK		0.0558
	COMMON STOCK		0.0555
	COMMON STOCK		0.0549
	COMMON STOCK		0.0549
	COMMON STOCK		0.0549
	COMMON STOCK		0.0549
	COMMON STOCK		0.0546
	COMMON STOCK		0.0543
	COMMON STOCK		0.0543
	COMMON STOCK		0.0529
	COMMON STOCK		0.0498
	COMMON STOCK		0.0488
	COMMON STOCK		0.0477
	COMMON STOCK		0.0468
	COMMON STOCK		0.0458
	COMMON STOCK		0.0458
	COMMON STOCK		0.0458
	COMMON STOCK		0.0458
	COMMON STOCK		0.0429
	COMMON STOCK		0.0423
	COMMON STOCK		0.0419
	COMMON STOCK		0.0416
	COMMON STOCK		0.0414

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	COMMON STOCK	[redacted]	0.0400
	COMMON STOCK		0.0398
	COMMON STOCK		0.0384
	COMMON STOCK		0.0381
	COMMON STOCK		0.0372
	COMMON STOCK		0.0366
	COMMON STOCK		0.0361
	COMMON STOCK		0.0357
	COMMON STOCK		0.0343
	COMMON STOCK		0.0343
	COMMON STOCK		0.0343
	COMMON STOCK		0.0336
	COMMON STOCK		0.0320
	COMMON STOCK		0.0318
	COMMON STOCK		0.0314
	COMMON STOCK		0.0313
	COMMON STOCK		0.0310
	COMMON STOCK		0.0309
	COMMON STOCK		0.0300
	COMMON STOCK		0.0300
	COMMON STOCK		0.0286
	COMMON STOCK		0.0286
	COMMON STOCK		0.0286
	COMMON STOCK		0.0276
	COMMON STOCK		0.0275
	COMMON STOCK		0.0275
	COMMON STOCK		0.0275
	COMMON STOCK		0.0263
	COMMON STOCK		0.0261
	COMMON STOCK		0.0252
	COMMON STOCK		0.0248
	COMMON STOCK		0.0243
	COMMON STOCK		0.0229
	COMMON STOCK		0.0229
	COMMON STOCK		0.0229
	COMMON STOCK		0.0229
	COMMON STOCK		0.0229
	COMMON STOCK		0.0219
	COMMON STOCK		0.0200
	COMMON STOCK		0.0194
	COMMON STOCK		0.0194
	COMMON STOCK		0.0183
	COMMON STOCK		0.0175
	COMMON STOCK		0.0174
	COMMON STOCK		0.0172
	COMMON STOCK		0.0172
	COMMON STOCK		0.0161
	COMMON STOCK		0.0161
	COMMON STOCK		0.0156
	COMMON STOCK		0.0143
	COMMON STOCK		0.0134

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	COMMON STOCK	[redacted]	0.0133
	COMMON STOCK		0.0118
	COMMON STOCK		0.0114
	COMMON STOCK		0.0114
	COMMON STOCK		0.0114
	COMMON STOCK		0.0111
	COMMON STOCK		0.0103
	COMMON STOCK		0.0100
	COMMON STOCK		0.0100
	COMMON STOCK		0.0067
	COMMON STOCK		0.0057
	COMMON STOCK		0.0057
	COMMON STOCK		0.0048
	COMMON STOCK		0.0042
	COMMON STOCK		0.0027
	COMMON STOCK		0.0024
	COMMON STOCK		0.0023
	COMMON STOCK		0.0018
	COMMON STOCK		0.0003
	COMMON STOCK		0.0001
	COMMON STOCK		0.0001
No. of Shareholders: 186	**COMMON STOCK**		**100.0000**
[redacted]	SERIES A PREFERRED STOCK	[redacted]	67.6604
	SERIES A PREFERRED STOCK		14.0504
	SERIES A PREFERRED STOCK		8.4364
	SERIES A PREFERRED STOCK		2.1143
	SERIES A PREFERRED STOCK		2.1143
	SERIES A PREFERRED STOCK		1.4061
	SERIES A PREFERRED STOCK		0.7030
	SERIES A PREFERRED STOCK		0.7030
	SERIES A PREFERRED STOCK		0.5624
	SERIES A PREFERRED STOCK		0.5624
	SERIES A PREFERRED STOCK		0.5624
	SERIES A PREFERRED STOCK		0.2812
	SERIES A PREFERRED STOCK		0.2812
	SERIES A PREFERRED STOCK		0.2812
	SERIES A PREFERRED STOCK		0.1406
	SERIES A PREFERRED STOCK		0.1406
No. of Shareholders: 16	**SERIES A PREFERRED STOCK**		**100.0000**
[redacted]	SERIES B PREFERRED STOCK	[redacted]	69.6594
	SERIES B PREFERRED STOCK		15.4799
	SERIES B PREFERRED STOCK		15.4799
	SERIES B PREFERRED STOCK		7.7399
	SERIES B PREFERRED STOCK		3.0960
	SERIES B PREFERRED STOCK		3.0960
	SERIES B PREFERRED STOCK		0.3096
	SERIES B PREFERRED STOCK		0.1548

Shareholder		Class/Series Name	Total Shares	% of Class/Series
[redacted]		SERIES B PREFERRED STOCK	[redacted]	0.1548
		SERIES B PREFERRED STOCK		0.1548
		SERIES B PREFERRED STOCK		0.0774
		SERIES B PREFERRED STOCK		0.0774
No. of Shareholders:	**11**	**SERIES B PREFERRED STOCK**		**100.0000**
[redacted]		SERIES C PREFERRED STOCK	[redacted]	45.0000
		SERIES C PREFERRED STOCK		33.6386
		SERIES C PREFERRED STOCK		11.2500
		SERIES C PREFERRED STOCK		0.1114
		SERIES C PREFERRED STOCK		30.0000
		SERIES C PREFERRED STOCK		6.3375
		SERIES C PREFERRED STOCK		5.7038
		SERIES C PREFERRED STOCK		0.5070
		SERIES C PREFERRED STOCK		0.1268
		SERIES C PREFERRED STOCK		6.2500
		SERIES C PREFERRED STOCK		3.0000
		SERIES C PREFERRED STOCK		2.5000
		SERIES C PREFERRED STOCK		0.5000
		SERIES C PREFERRED STOCK		1.2500
		SERIES C PREFERRED STOCK		1.2500
		SERIES C PREFERRED STOCK		1.2500
		SERIES C PREFERRED STOCK		1.2500
		SERIES C PREFERRED STOCK		0.6250
		SERIES C PREFERRED STOCK		0.6250
		SERIES C PREFERRED STOCK		0.6250
		SERIES C PREFERRED STOCK		0.6250
		SERIES C PREFERRED STOCK		0.6250
		SERIES C PREFERRED STOCK		0.2500
		SERIES C PREFERRED STOCK		0.2500
		SERIES C PREFERRED STOCK		0.2500
		SERIES C PREFERRED STOCK		0.1250
		SERIES C PREFERRED STOCK		0.0750
		SERIES C PREFERRED STOCK		0.0750
		SERIES C PREFERRED STOCK		0.0625
		SERIES C PREFERRED STOCK		0.0625
		SERIES C PREFERRED STOCK		0.0500
		SERIES C PREFERRED STOCK		0.0375
		SERIES C PREFERRED STOCK		0.0250
		SERIES C PREFERRED STOCK		0.0250
No. of Shareholders:	**31**	**SERIES C PREFERRED STOCK**		**100.0000**
[redacted]		SERIES D PREFERRED STOCK	[redacted]	22.2222
		SERIES D PREFERRED STOCK		20.7668

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	SERIES D PREFERRED STOCK	[redacted]	18.1300
	SERIES D PREFERRED STOCK		13.5526
	SERIES D PREFERRED STOCK		4.5325
	SERIES D PREFERRED STOCK		0.0449
	SERIES D PREFERRED STOCK		14.0000
	SERIES D PREFERRED STOCK		6.6667
	SERIES D PREFERRED STOCK		6.6667
	SERIES D PREFERRED STOCK		4.4444
	SERIES D PREFERRED STOCK		4.4444
	SERIES D PREFERRED STOCK		3.3333
	SERIES D PREFERRED STOCK		2.5700
	SERIES D PREFERRED STOCK		2.3130
	SERIES D PREFERRED STOCK		0.2056
	SERIES D PREFERRED STOCK		0.0514
	SERIES D PREFERRED STOCK		0.8889
	SERIES D PREFERRED STOCK		0.4444
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.2222
	SERIES D PREFERRED STOCK		0.0444
	SERIES D PREFERRED STOCK		0.0222
	SERIES D PREFERRED STOCK		0.0222
No. of Shareholders: 28	**SERIES D PREFERRED STOCK**		**100.0000**
[redacted]	SERIES E PREFERRED STOCK	[redacted]	39.7226
	SERIES E PREFERRED STOCK		19.3636
	SERIES E PREFERRED STOCK		9.3550
	SERIES E PREFERRED STOCK		8.0472
	SERIES E PREFERRED STOCK		1.0899
	SERIES E PREFERRED STOCK		0.2180
	SERIES E PREFERRED STOCK		5.3275
	SERIES E PREFERRED STOCK		2.5934
	SERIES E PREFERRED STOCK		2.4460
	SERIES E PREFERRED STOCK		0.2305

Shareholder	Class/Series Name	Total Shares	% of Class/Series
[redacted]	SERIES E PREFERRED STOCK	[redacted]	0.0576
	SERIES E PREFERRED STOCK		5.0065
	SERIES E PREFERRED STOCK		4.8621
	SERIES E PREFERRED STOCK		4.2260
	SERIES E PREFERRED STOCK		3.2106
	SERIES E PREFERRED STOCK		1.3820
	SERIES E PREFERRED STOCK		0.9937
	SERIES E PREFERRED STOCK		0.9937
	SERIES E PREFERRED STOCK		0.8719
	SERIES E PREFERRED STOCK		0.6518
	SERIES E PREFERRED STOCK		0.2180
	SERIES E PREFERRED STOCK		0.0022
	SERIES E PREFERRED STOCK		0.5788
	SERIES E PREFERRED STOCK		0.5209
	SERIES E PREFERRED STOCK		0.4969
	SERIES E PREFERRED STOCK		0.3052
	SERIES E PREFERRED STOCK		0.2725
	SERIES E PREFERRED STOCK		0.2725
	SERIES E PREFERRED STOCK		0.2513
	SERIES E PREFERRED STOCK		0.2484
	SERIES E PREFERRED STOCK		0.2446
	SERIES E PREFERRED STOCK		0.1466
	SERIES E PREFERRED STOCK		0.1362
	SERIES E PREFERRED STOCK		0.1090
	SERIES E PREFERRED STOCK		0.1081
	SERIES E PREFERRED STOCK		0.1042
	SERIES E PREFERRED STOCK		0.0994
	SERIES E PREFERRED STOCK		0.0905
	SERIES E PREFERRED STOCK		0.0452
	SERIES E PREFERRED STOCK		0.0452
	SERIES E PREFERRED STOCK		0.0808
	SERIES E PREFERRED STOCK		0.0654
	SERIES E PREFERRED STOCK		0.0654
	SERIES E PREFERRED STOCK		0.0654
	SERIES E PREFERRED STOCK		0.0596
	SERIES E PREFERRED STOCK		0.0436
	SERIES E PREFERRED STOCK		0.0436
	SERIES E PREFERRED STOCK		0.0407
	SERIES E PREFERRED STOCK		0.0360
	SERIES E PREFERRED STOCK		0.0327
	SERIES E PREFERRED STOCK		0.0245
	SERIES E PREFERRED STOCK		0.0245
	SERIES E PREFERRED STOCK		0.0208
	SERIES E PREFERRED STOCK		0.0196
	SERIES E PREFERRED STOCK		0.0153
	SERIES E PREFERRED STOCK		0.0098
	SERIES E PREFERRED STOCK		0.0087

Shareholder		Class/Series Name	Total Shares	% of Class/Series
[redacted]		SERIES E PREFERRED STOCK	[redacted]	0.0065
		SERIES E PREFERRED STOCK		0.0065
		SERIES E PREFERRED STOCK		0.0060
		SERIES E PREFERRED STOCK		0.0054
		SERIES E PREFERRED STOCK		0.0050
		SERIES E PREFERRED STOCK		0.0050
		SERIES E PREFERRED STOCK		0.0050
		SERIES E PREFERRED STOCK		0.0040
No. of Shareholders:	**61**	**SERIES E PREFERRED STOCK**		**100.0000**
[redacted]		SERIES F PREFERRED STOCK		78.7879
		SERIES F PREFERRED STOCK		12.1212
		SERIES F PREFERRED STOCK		9.0909
No. of Shareholders:	**3**	**SERIES F PREFERRED STOCK**		**100.0000**

No. of Shareholders of All Class/Series Name : 260

SCHEDULE B-1
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Real Property
Owned or Leased

(a) Real Property Owned or Leased

Company	Location Address	County	Leasehold or Fee	Lease or Mortgage Terms	Lessor or Mortgagee	Chief Executive Office (Y/N)	Chief Operating Office (Y/N)
Tesla Motors, Inc.	1050 Bing St., San Carlos, CA 94070	San Mateo	Leasehold	Term ends June 31, 2010	Russell A Margiotta and Deborah B. Margiotta, Trustees of the Margiotta Family Trust UTA May 26, 1981	Y	Y
Tesla Motors, Inc.	11159 Santa Monica Blvd., Los Angeles, CA 90025	Los Angeles	Leasehold	Term ends August 15, 2016	James R. Hull	N	N
Tesla Motors, Inc.	11163 Santa Monica Blvd., Los Angeles, CA 90025	Los Angeles	Leasehold	Term ends August 15, 2016	James R. Hull	N	N
Tesla Motors, Inc.	1635-1/2 Pontius Ave., Los Angeles, CA 90025	Los Angeles	Leasehold	Term ends August 15, 2016	James R. Hull	N	N

Company	Location Address	County	Leasehold or Fee	Lease or Mortgage Terms	Lessor or Mortgagee	Chief Executive Office (Y/N)	Chief Operating Office (Y/N)
Tesla Motors, Inc.	300 El Camino Real, Menlo Park, CA	San Mateo	Leasehold	Term ends September 30, 2012; lease may be terminated without cause with six months' notice	The Board of Trustees of the Leland Stanford Junior University	N	N
Tesla Motors, Inc.	NASA Ames Research Center, Moffett Field, CA 94035-1000	Santa Clara	Leasehold	Term ends November 30, 2009	National Aeronautics and Space Administration	N	N
Tesla Motors, Inc.	1 Circle Star Way, 4th Floor, San Carlos 94070	San Mateo	Leasehold	Term ends February 28, 2010	Emptoris, Inc.	N	N
Tesla Motors, Inc.	935 Washington St., San Carlos, CA	San Mateo	Leasehold	Term ends May 9, 2011	California Kids MFG, Inc. and Delia Varela-Glass	N	N
Tesla Motors, Inc.	1053 W. Grand Ave., Chicago, IL 60622	Cook	Leasehold	Term ends February 29, 2012	Spirit Winds, LLC	N	N
Tesla Motors, Inc.	1941 Tigertail Boulevard, Dania Beach, Florida 33304	Ft. Lauderdale	Leasehold	Term ends August 31, 2014	Wilson Hollywood Showroom, LLC	N	N

Company	Location Address	County	Leasehold or Fee	Lease or Mortgage Terms	Lessor or Mortgagee	Chief Executive Office (Y/N)	Chief Operating Office (Y/N)
Tesla Motors, Inc.	431 & 435 Westlake Seattle, WA	King	Leasehold	Term ends 7 years following the Commencement Date	On Ballard LLC	N	N
Tesla Motors, Inc.	511 W. 25th St. New York, NY 10001	Borough of Manhattan	Leasehold	Term ends 7 years following the Commencement Date	25th Street Art Partners LLC, d/b/a Cardinal Real Estate Investments	Y	Y
Tesla Motors, Inc.	915 Pearl St., Boulder, Colorado 80302	Boulder	Leasehold	Term ends April 6, 2010	901 Eldridge, Inc.	N	N
Tesla Motors, Inc.	3500 Deer Creek Road, Palo Alto, California	Santa Clara	Leasehold	Term ends January 31, 2016	The Board of Trustees of the Leland Stanford Junior University	N	N
Tesla Motors, Inc.	One Rocket Road, Hawthorne, CA 90250	Los Angeles	N/A (Applicant has entered into a license agreement)	Month-to-Month	MS Kearny Northrop Avenue, LLC	N	N
Tesla Motors Limited	49-51 Cheval Place, London SW7 1EW	N/A	Leasehold	Term ends June 20, 2011	Mercedes-Benz Retail Group UK Limited	N	N

Company	Location Address	County	Leasehold or Fee	Lease or Mortgage Terms	Lessor or Mortgagee	Chief Executive Office (Y/N)	Chief Operating Office (Y/N)
Tesla Motors Limited	Hethel, Norwich, Norfolk NR14 8EZ	N/A	Leasehold	Initial term ended February 27, 2006; now month to month	Group Lotus PLC	Y	Y
Tesla Motors Limited	Units 4, 5 & 6 Wymondham Business Park	Norfolk, UK	Leasehold	Month to Month; Tenancy at Will	Morton Windows and Conservatories Limited	N	N
Tesla Motors Limited	Blumenstrasse 17, 80331, Munich	Germany	Leasehold	Term ends June 30, 2012	Hertie-Stiftung (Trust Fund)	N	Y
Tesla Motors Limited	4 Boulevard des Moulins, Monte Carlo 98000 Monaco	Monaco	Leasehold	Term ends November 30, 2011	Société Civile Immobilière LE CAHAN	Y	Y
Tesla Motors Taiwan Limited	1F, 52 Tin Hwu Rd. Ta Gann Village Gwai San Hsian, Tao Yuan Hsien, Taiwan	N/A	Leasehold	Term ends October 31, 2011; the Applicant intends to terminate this lease on March 31, 2010	I-Sheng Electric Wire & Cable Co., Ltd.	Y	Y

(b) Location of Books and Records if not at Chief Executive Office

- The books and records of Tesla Motors GmbH are located at Beiten Burkhardt Rechtsanwaltsgesellschaft mbH, its law firm in Munich, Germany, which is located at Ganghoferstrasse 33, 80339 Munich, Germany
- The books and records of Tesla Motors Canada Inc. are located at Miller Canfield Paddock and Stone, its law firm in Ontario, Canada, which is located at 443 Ouellette Avenue, Windsor, ON N9A 6R4, Canada

SCHEDULE B-2
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Third Party Locations of Collateral

Fixed Assets (as of September 30, 2009)

Person Possessing Collateral	Location	County	Book Value (in dollars)	Type of Agreement	Name of Agreement
(a) (4)	N/A	N/A		N/A	(a) (4)
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	[redacted]	N/A		Contract Manufacturer / Supplier	
	N/A	N/A		N/A	

(b) (4) [redacted]		N/A	N/A	[redacted]	N/A	(b) (4) [redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]
[redacted]		N/A	N/A	[redacted]	N/A	[redacted]

The fixed assets above include tooling owned by the Applicant held at third party sites. The Applicant is in the process of verifying the tooling currently in use by its suppliers in connection with its year end financial closing process. The Applicant may elect to take a reserve for obsolescence of such assets or otherwise write down their values in connection with its closing process.

Physical Inventory (as of September 30, 2009)

Person Possessing Collateral	Location	County	Book Value (in dollars)	Type of Agreement	Name of Agreement
(b)(4)		Alameda		U.S. Parts Hub	(b)(4)
		N/A		Contract Manufacturer/Supplier	
		Alameda		US Parts Hub	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	
	N/A	N/A		N/A	

SCHEDULE B-3
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Future Project Locations

Company	Location Address	County	Own or Lease	Current Owner
Tesla Motors, Inc.	3500 Deer Creek Road, Palo Alto, CA 94304	Santa Clara	Lease	The Board of Trustees of the Leland Stanford Junior University
Tesla Motors, Inc.	12214 Lakewood Blvd., Downey, CA 90242	Los Angeles	Lease	PCCP IRG DOWNEY, LLC; IRG DOWNEY, LLC

SCHEDULE C-1
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Cash; Accounts; Other Investment Property

Deposit Accounts:

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose
Tesla Motors, Inc.	(a)(4)	[redacted]	Checking	[redacted]
Tesla Motors, Inc.		[redacted]	Money Market	[redacted]
Tesla Motors, Inc.		[redacted]	Money Market	[redacted]
Tesla Motors, Inc.		[redacted]	Checking	[redacted]
Tesla Motors, Inc.		[redacted]	Checking	[redacted]
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	[redacted]
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	[redacted]
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	[redacted]

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose
Tesla Motors, Inc.	(b)(4)	[redacted]	CD-Restricted Cash	[redacted]
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	
Tesla Motors, Inc.		[redacted]	CD-Restricted Cash	
Tesla Motors, Inc.		[redacted]	Checking Euro Acct	[redacted]
Tesla Motors, Inc.		[redacted]	Checking GBP Acct	[redacted]
Tesla Motors, Inc.		[redacted]	Checking	[redacted]
Tesla Motors, Inc.		[redacted]	Checking	[redacted]
Tesla Motors, Inc.		[redacted]	Checking Euro Acct	[redacted]

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose
Tesla Motors, Inc.	(b)(4)	[redacted]	CD-Restricted Cash	[redacted]
Tesla Motors, Inc.		[redacted]	Checking	
Tesla Motors, Inc.		[redacted]	Processing Account	
Tesla Motors, Inc.		[redacted]	ATVM Tesla Dedicated Account	
Tesla Motors, Inc.		[redacted]	ATVM Tesla Dedicated Account	
Tesla Motors Limited		[redacted]	Sterling Current Account TML	
Tesla Motors Limited		[redacted]	Sterling Current Account TML	
Tesla Motors Limited		[redacted]	Euro Current Account TML	

Company	Name and Address of Depositary Bank	Account Number	Account Name	Purpose
Tesla Motors Limited	(b) (4)	[redacted]	US Dollar Current Account TML	[redacted]
Tesla Motors Taiwan Limited		[redacted]	Checking	
Tesla Motors GmbH		[redacted]	Euro Current Account TMG	
Tesla Motors S.A.R.L		[redacted]	Euro Current Account TMG	

Foreign Exchange Agreements (as of December 8, 2009)

Company	Name of Bank	Exchange	Amount at Maturity (in U.S. dollars)	Maturity Date
Tesla Motors, Inc.	(b) (4)	GBP to USD	[redacted]	11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		11-Jan-10
Tesla Motors, Inc.		GBP to USD		1-Feb-10
Tesla Motors, Inc.		GBP to USD		1-Feb-10
Tesla Motors, Inc.		GBP to USD		1-Feb-10
Tesla Motors, Inc.		GBP to USD		1-Feb-10

Company	Name of Bank	Exchange	Amount at Maturity (in U.S. dollars)	Maturity Date
Tesla Motors, Inc.	(b)(4)	GBP to USD	[redacted]	1-Feb-10
Tesla Motors, Inc.		GBP to USD		1-Feb-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Mar-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		1-Apr-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		4-May-10
Tesla Motors, Inc.		GBP to USD		1-Jun-10
Tesla Motors, Inc.		GBP to USD		1-Jun-10
Tesla Motors, Inc.		GBP to USD		1-Jun-10
Tesla Motors, Inc.		GBP to USD		1-Jun-10

Securities Accounts

Company	Name and Address of Financial Institution	Account Number	Account Name	Purpose
Tesla Motors, Inc.	(b)(4)	[redacted]	Money Market	[redacted]

Commodity Accounts

- None

Other Investment Property

- None

SCHEDULE C-2
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Promissory Notes; Instruments; Chattel Paper

- None.

SCHEDULE D-3
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Insurance

(a) Insurance Policies in Force

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Commercial Package	Chubb/Federal Insurance Company	01/07/09 to 04/14/10	[redacted]	
Umbrella	Chubb/ Federal Insurance Company	01/07/09 to 04/14/10		
Fiduciary, Crime & Special Contingency	Chubb/Federal Ins. Co.	01/07/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Foreign Package	Chubb/Great Northern Insurance Company	01/07/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Cargo (Auditable Policy)	Navigators Insurance Company	01/07/09 to 04/14/10		
UK Local Admitted Package	Chubb Ins. Co. of Europe S.E.	01/31/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Taiwan Local General Liability	Great Northern Insurance Company	01/07/09 to 04/14/10		
Taiwan Local Property	Great Northern Insurance Company	01/07/09 to 04/14/10		
Garage Liability	ACE American Insurance Company	04/14/09 to 04/14/10		
Workers' Compensation (Auditable Policy)	Zurich - American Guarantee & Liability	05/01/09 to 05/01/10		
Products Liability ($1,000,000 Primary) (Auditable Policy)	Westchester Surplus Lines Insurance Company	04/14/09 to 04/14/10		
Excess Products and Garage Liability ($20M Excess of $1M) (Auditable Policy)	Lexington Insurance Company	04/14/09 to 04/14/10		
Public Track Testing	Lloyds Syndicate New	01/31/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
	Line		[redacted]	
UK Employers Liability	Travelers	01/31/09 to 04/14/10		
Motor Trade & Motor Fleet	Travelers	01/31/09 to 04/14/10		
Personal Accident	Chubb	01/31/09 to 04/14/10		
Directors & Officers and Employment Practices Liability	Twin City Fire Ins. Co.	07/27/09 to 07/27/10		
Excess Directors & Officers Liability	XL Specialty Ins. Co	07/27/09 to 07/27/10		
Excess	Liberty Mutual	07/27/09 to		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Directors & Officers Liability	Ins. Co	07/27/10	[redacted]	

(b) Material Claims

Insurer: Twin City Fire Insurance Co.
Insured: Tesla Motors, Inc.
Policy: Private Choice Encore
Policy No.: KB0233381
Matter: Martin Eberhard v. Tesla Motors, Inc. et al.
Amount Paid: [redacted] contribution toward defense costs

SCHEDULE C-4
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Vehicles and Other Titled Assets

Motor Vehicles

- **Roadsters (as of December 12, 2009)**

Year	Make	Model	VIN	Garaging City	State	Zip Code
2010	Tesla	Roadster	5YJRE1A17A1000759	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A17A1000776	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A16A1000736	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A10A1000778	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A32A1000752	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A34A1001000	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A32A1000766	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A35A1000793	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A39A1000795	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A36A1000754	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A16A1000767	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A34A1000784	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A18A1000771	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A37A1000780	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A37A1000794	Menlo Park	CA	95025
2010	Tesla	Roadster	5YJRE1A32A1000797	Menlo Park	CA	95025

- **Others (as of December 12, 2009)**

Year	Make	Model	VIN	Garaging City	State	Zip Code
1995	GMC	Flat Bed Tow Truck	1GDJ6H1J5SJ503783	Menlo Park	CA	94025

Other Titled Assets

- None.

SCHEDULE C-5
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Commercial Tort Claims

- None.

SCHEDULE C-6
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Special Situations

(a)

- None.

(b)

- None.

(c)

- None.

(d)

- None.

(e)

- None.

(f)

- None.

SCHEDULE D-1
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Sources and Uses of Funding; Project Documents

(a) Sources and Uses of Funding

Both Project S and Project P are fully funded by the Applicant and the Department of Energy ATVM Loan Program. The funding structure of both projects is summarized in the table below.

Project *(in USD millions)*	**Total Cost**	**Historical Cost Paid by Applicant**	**DOE Loan Amount**	**Tesla Amount**
Project S (Model S Sedan)	$455	$57	$364	$34
Project P (Powertrain Factory)	$154	$53	$101	$0
Total	$608	$110	$465	$34

In order to fully fund the equity portion of the projects, the Applicant will require $34 million. At this time, the Applicant has sufficient cash to fund this amount without requiring additional sources of funds.

(b) Agreements and Arrangements with Daimler:

- Series E Preferred Stock Purchase Agreement by and between Tesla Motors, Inc. and Blackstar Investco LLC, dated as of May 11, 2009. *Note that this agreement is no longer operative.
- Series F Preferred Stock Purchase Agreement by and between Tesla Motors, Inc. and Blackstar Investco LLC, dated as of August 31, 2009. *Note that this agreement is no longer operative.
- Fifth Amended and Restated Investors' Rights Agreement by and among Tesla Motors, Inc., Series A stockholders listed on Exhibit A thereto, Series B stockholders listed on Exhibit B thereto, Series C stockholders listed on Exhibit C thereto, Series D stockholders listed on Exhibit D thereto, Series E stockholders listed on Exhibit E thereto and Series F stockholders listed on Exhibit F thereto, dated as of August 31, 2009.
- Amended and Restated Right of First Refusal Agreement by and among Tesla Motors, Inc., holders of at least 1,000,000 shares of Series A Preferred Stock of Tesla Motors, Inc. listed on Exhibit A thereto, holders of at least 1,000,000 shares of Series B Preferred Stock of Tesla Motors, Inc. listed on Exhibit B thereto, holders of at least 1,000,000 shares of Series C Preferred Stock of Tesla Motors, Inc. listed on Exhibit C thereto, holders of at least 1,000,000 shares of Series D Preferred Stock of Tesla Motors, Inc. listed on Exhibit D thereto, holders of at least 1,000,000 shares of Series E Preferred Stock of Tesla Motors, Inc. listed on Exhibit E thereto and holders of at least 1,000,000 shares of Series F Preferred

Stock of Tesla Motors, Inc. listed on Exhibit F thereto, dated as of August 31, 2009.

- Fifth Amended and Restated Voting Rights Agreement by and among Tesla Motors, Inc., holders of shares of Series A Preferred Stock, listed on Exhibit A thereto, holders of shares of Series B Preferred Stock, listed on Exhibit B thereto, holders of shares of Series C Preferred Stock, listed on Exhibit C thereto, holders of shares of Series D Preferred Stock, listed on Exhibit D thereto, holders of shares of Series E Preferred Stock, listed on Exhibit E thereto, holders of shares of Series F Preferred Stock, listed on Exhibit F thereto, and holders of shares of Common Stock, listed on Exhibit G thereto, dated as of August 31, 2009.
- Exclusivity and Intellectual Property Agreement by and between Tesla Motors, Inc. and Daimler North America Corporation, dated as of May 11, 2009.
- Letter Agreement Re: Restrictions on Share Transfer; Certain Voting Restrictions by and between Tesla Motors, Inc. and Blackstar Investco LLC, dated as of May 11, 2009.
- Side Agreement by and between Tesla Motors, Inc. and Blackstar Investco LLC, dated as of May 11, 2009.
- Non-Binding Term Sheet for Technology Collaboration by and between Tesla Motors, Inc. and Daimler AG, dated as of May 11, 2009.
- Non-Binding Term Sheet for Automotive Support to Safeguard Model S Timing by and between Tesla Motors, Inc. and Daimler AG, dated as of May 11, 2009.
- Non-Binding Term Sheet for A-Class EV Collaboration by and between Tesla Motors, Inc. and Daimler AG, dated as of May 11, 2009.
- Non-Binding Term Sheet for Component Sharing by and between Tesla Motors, Inc. and Daimler AG, dated as of May 11, 2009.
- Development Contract (Smart EV Agreement) by and between Tesla Motors Limited and Daimler AG, dated as of May 1, 2009.
- Purchase contract (No. 1155701625) issued by Daimler AG to Tesla Motors Limited, dated as of November 12, 2009.
- Purchase contract (No. 1155701628) issued by Daimler AG to Tesla Motors Limited, dated as of November 17, 2009.
- Letter of Intent by and between Tesla Motors, Inc. and Mercedes-Benz USA, LLC, dated as of November 23, 2009.
- Purchase Order (No. 4000196261) issued by Freightliner Custom Chassis Corporation (a subsidiary of Daimler Trucks North America LLC) to Tesla Motors, Inc., dated as of December 2, 2009.
- Purchase Order (No. 4000196262) issued by Freightliner Custom Chassis Corporation (a subsidiary of Daimler Trucks North America LLC) to Tesla Motors, Inc., dated as of December 2, 2009.
- Lease of Personal Property by and between Mercedes-Benz Research & Development North America, Inc. and Tesla Motors, Inc., dated as of July 2, 2009.

(c) Project Documents Necessary to be Obtained:

- Lease for Project S Facility (*see* Letter Agreement with IRG/PCCP, dated November 19, 2009)
- Supplier Agreements for Project S (suppliers to be determined)
- Tooling and Construction Agreements for Project S (tooling and contractor selections to be determined)
- Supply Agreements for Project P (suppliers to be determined)

SCHEDULE D-2
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Contracts with Customers and Suppliers

(a) Roadster and Model S Deposit Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	N/A	(b) (4)	N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A
Tesla Motors, Inc.	N/A		N/A	N/A

(b) Agreements Constituting More Than 5% of Sales

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date

Tesla Motors, Inc.	March 26, 2008	ZEV Credits Agreement	(b) (4)	December 31, 2008, provided that certain provisions survive expiration of the agreement
Tesla Motors, Inc.	February 12, 2009	ZEV Credits Agreement	American Honda Motor Co., Inc.	December 31, 2009, provided that certain provisions survive expiration of the agreement
Tesla Motors, Inc.	February 20, 2009	Addendum to ZEV Credits Agreement	American Honda Motor Co., Inc.	December 31, 2009, provided that certain provisions survive expiration of the agreement
Tesla Motors Limited	May 1, 2009	Development Contract (Smart EV Agreement)	Daimler AG	None Specified
Tesla Motors Limited	September 28, 2009	Letter Agreement (Battery Systems and Chargers for the SMART EV – Phase II)	Daimler AG	None Specified

(c) Agreements with Lotus

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	July 2005	Supply Agreement for Products and Services (b) (4)	Lotus Cars, Ltd.	1700 Cars or March 2011
Tesla Motors, Inc.	August 2009	Amendment No. 1 to Supply Agreement for Products and Services (b) (4)	Lotus Cars, Ltd.	1700 Cars or March 2011
Tesla Motors, Inc.	July 2009	After-Sales Supply Agreement (NAFTA)	Lotus Cars, Ltd.	June 2021
Tesla Motors, Inc.	October 2009	After-Sales Supply Agreement (EU)	Lotus Cars, Ltd.	October 2021

(d) Other Material Distribution, Supply and Processing Agreements

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	Ongoing	Purchase orders	Sotira 35	N/A

Tesla Motors, Inc.	February 1, 2007	Supply Agreement	Sanyo Electric Co., Ltd. Mobile Energy Company and Sanyo Energy (USA) Corporation	February 1, 2010; Year to Year; automatic renewal
Tesla Motors, Inc.	February 1, 2007	Amendment No. 1 to Supply Agreement	Sanyo Electric Co., Ltd. Mobile Energy Company and Sanyo Energy (USA) Corporation	February 1, 2010; Year to Year; automatic renewal
Tesla Motors, Inc.	February 12, 2007	Supply Agreement	Taiway Ltd.	Feb 12, 2010; automatic renewal
Tesla Motors, Inc.	September 22, 2008	Letter Agreement Re: Modification to Tesla Motors Terms & Conditions of Purchase	BorgWarner TorqTransfer Systems Inc.	None Specified
Tesla Motors, Inc.	April 19, 2007	Supply Agreement	Chroma ATE Inc.	April 2010; automatic renewal
Tesla Motors, Inc.	April 13, 2007	Supply Agreement	Polytec Holden Ltd.	April 13, 2010; automatic renewal
Tesla Motors, Inc.	September 1, 2006	Supply Agreement	Eberspacher (UK) Ltd.	September 2009; automatic renewal
Tesla Motors, Inc.	September 1, 2006	Supply Agreement	Perei Group (UK) Ltd.	September 1, 2009; automatic renewal
Tesla Motors, Inc.	September 1, 2006	Supply Agreement	Burgaflex UK Ltd.	September 1, 2009; automatic renewal
Tesla Motors, Inc.	March 21, 2007	Supply Agreement	(b) (4)	March 2007; automatic renewal
Tesla Motors, Inc.	February 12, 2009	ZEV Credits Agreement	American Honda Motor Co., Inc.	December 31, 2009, provided that certain provisions survive expiration of the agreement

Tesla Motors, Inc.	February 20, 2009	Addendum to ZEV Credits Agreement	American Honda Motor Co., Inc.	December 31, 2009, provided that certain provisions survive expiration of the agreement
Tesla Motors, Inc.	July 21, 2009	Supply Agreement	Panasonic Industrial Company, and Panasonic Corporation, acting through Energy Company	December 31, 2010; automatic renewal

(e) Licensing and Franchising Agreements*

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	May 2004	Technology License Agreement	(b) (4)	December 2014
Tesla Motors, Inc.	June 15, 2007	License Agreement	(b) (4)	Perpetuity
Tesla Motors, Inc.	May 31, 2007	Automobile License and Marketing Agreement	(b) (4)	None (b) (4)
Tesla Motors, Inc.	July 2005	Manufacturing Services Agreement	Lotus Cars, Ltd.	1700 Cars or March 2011
Tesla Motors, Inc.	October 15, 2009 (effective as of December 30, 2009)	Dealer Agreement	Tesla Motors New York LLC	Perpetuity
Tesla Motors, Inc.	September 29, 2006	Software License Agreement	(b) (4)	Perpetuity (unless terminated pursuant to terms of license agreement)
Tesla Motors, Inc.	August 20, 2008	Master Sales and Service Agreement, as supplemented by that certain Addendum to Master Sales and Service Agreement	(b) (4)	Perpetuity (unless terminated pursuant to terms of license agreement)
Tesla Motors, Inc.	June 18, 2009	License to Use Image(s) for Promotional Purposes	(b) (4)	June 18, 2013
Tesla Motors, Inc.	August 28, 2009	Car Manufacturer License Agreement	(b) (4)	August 28, 2010

Company	Date	Name and Type of Agreement	Name of Other Party(ies)	Termination Date
Tesla Motors, Inc.	May 4, 2009	In-Game Branding Agreement	(b) (4) [redacted]	(b) (4) [redacted] and any sequels are no longer manufactured and/or sold

*The Applicant enters into commercial "off-the-shelf" or "shrink-wrap" software licenses in the ordinary course of its business. Copies of these licenses have not been provided.

(f) Advertising, Affiliation and Marking Agreements

- None.

(g) Outsourcing Agreements

- None.

SCHEDULE D-3
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Insurance

(a) Insurance Policies in Force

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Commercial Package	Chubb/Federal Insurance Company	01/07/09 to 04/14/10	[redacted]	
Umbrella	Chubb/ Federal Insurance Company	01/07/09 to 04/14/10		
Fiduciary, Crime & Special Contingency	Chubb/Federal Ins. Co.	01/07/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Foreign Package	Chubb/Great Northern Insurance Company	01/07/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Cargo (Auditable Policy)	Navigators Insurance Company	01/07/09 to 04/14/10		
UK Local Admitted Package	Chubb Ins. Co. of Europe S.E.	01/31/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
			[redacted]	
Taiwan Local General Liability	Great Northern Insurance Company	01/07/09 to 04/14/10		
Taiwan Local Property	Great Northern Insurance Company	01/07/09 to 04/14/10		
Garage Liability	ACE American Insurance Company	04/14/09 to 04/14/10		
Workers' Compensation (Auditable Policy)	Zurich - American Guarantee & Liability	05/01/09 to 05/01/10		
Products Liability ($1,000,000 Primary) (Auditable Policy)	Westchester Surplus Lines Insurance Company	04/14/09 to 04/14/10		
Excess Products and Garage Liability ($20M Excess of $1M) (Auditable Policy)	Lexington Insurance Company	04/14/09 to 04/14/10		
Public Track Testing	Lloyds Syndicate New	01/31/09 to 04/14/10		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
	Line		[redacted]	
UK Employers Liability	Travelers	01/31/09 to 04/14/10		
Motor Trade & Motor Fleet	Travelers	01/31/09 to 04/14/10		
Personal Accident	Chubb	01/31/09 to 04/14/10		
Directors & Officers and Employment Practices Liability	Twin City Fire Ins. Co.	07/27/09 to 07/27/10		
Excess Directors & Officers Liability	XL Specialty Ins. Co	07/27/09 to 07/27/10		
Excess	Liberty Mutual	07/27/09 to		

Coverage	Carrier	Policy Term	Limits/Deductible	Claims – Under Policy Term
Directors & Officers Liability	Ins. Co	07/27/10	[redacted]	

(b) Material Claims

Insurer: Twin City Fire Insurance Co.
Insured: Tesla Motors, Inc.
Policy: Private Choice Encore
Policy No.: KB0233381
Matter: Martin Eberhard v. Tesla Motors, Inc. et al.
Amount Paid: [redacted] contribution toward defense costs

SCHEDULE D-4
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Indebtedness

TESLA MOTORS, INC.

- **Equipment Leases**

Holder	Equipment	Lease/Loan Inception Date	Total Payment on Loan	Amount payable per month	Term (Months)	Fixed Asset category in G/L	Lien ?
[redacted]							

Holder	Equipment	Lease/Loan Inception Date	Total Payment on Loan	Amount payable per month	Term (Months)	Fixed Asset category in G/L	Lien ?
[redacted]							

- **Equipment Loans**

Holder	Equipment	Lease/Loan Inception Date	Total Payment on Loan	Amount payable per month	Term (Months)	Fixed Asset category in G/L	Lien?
[redacted]							

- **Other**

[redacted]

SCHEDULE D-5
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Liens

*With regard to each lien below, except as otherwise noted, the liens secure only the specific obligations under the equipment leases or equipment loans referenced on Schedule D-4 and the liens are only on equipment financed thereby (including all upgrades, repairs, additions, attachments, accessories and accessions to such equipment; all substitutions, replacements or exchanges for such equipment; and all other proceeds of such equipment).

TESLA MOTORS, INC.

California

Name of Secured Party	UCC-1 File Recordation No.	Dated	Collateral
CFC Investment Company	077099512454	01/12/2007	Financed Equipment
Key Equipment Finance Inc.	077116377483	06/05/2007	Financed Equipment
CAM Leasing Corp	08716976818	08/22/2008	Financed Equipment

Delaware

Name of Secured Party	UCC-1 File Recordation No.	Dated	Collateral
NMHG Financial Services, Inc.	20080250355	01/22/2008	Financed Equipment
US Bancorp	20081470184	04/28/2008	Financed Equipment
US Bancorp	20081538519	05/02/2008	Financed Equipment
US Bancorp	20081538543	05/02/2008	Financed Equipment
US Bancorp	20081612298	05/08/2008	Financed Equipment
NMHG Financial Services, Inc.	20083211784	09/23/2008	Financed Equipment
City National Bank, a National Banking Association	20090205713	01/06/2009	Equipment, general intangibles and other personal property per Equipment Lease dated 12/31/2008
Mr. Copy	20093599008	11/09/2009	Equipment

Other

Name of Secured Party	UCC-1 File Recordation No.	Dated	Collateral
(b) (4) , a National Banking Association	N/A	N/A	[redacted]
(b) (4) , a National Banking Association	N/A	N/A	
(b) (4) National Association	N/A	N/A	
(b) (4) , a National Banking Association	N/A	N/A	

			(b) (4)
PayPal	N/A	N/A	
(b) (4)	N/A	N/A	

TESLA MOTORS, INC.

- None.

TESLA MOTORS LIMITED

- None.

TESLA MOTORS TAIWAN LIMITED

- None.

TESLA MOTORS CANADA INC.

- None.

TESLA MOTORS NEW YORK LLC

- None.

TESLA MOTORS GMBH

- None.

TESLA MOTORS S.A.R.L.

- None.

SCHEDULE D-6
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

(a) Litigation, arbitration, investigations or other proceedings pending or threatened

Vespremi, et al	In July 2008 former employee David Vespremi filed a complaint against the Applicant, Darryl Siry, Ze'ev Drori, and Elon Musk in Superior Court of California in San Mateo County alleging failure to pay wages, waiting time penalties, breach of contract, libel, slander, public disclosure of private facts, breach of covenant of good faith, and unfair business practices. The complaint was amended on August 21, 2008 to include two additional plaintiffs (Glaudell and LiVigni) and the third amended complaint added a claim for false light invasion of privacy. Tesla demurred to six of the nine claims and prevailed; in April 2009, the Superior Court of California ruled in the Applicant's favor and dismissed the following claims without leave to amend: breach of contract, breach of the covenant of good faith and fair dealing, libel, slander, public disclosure of private facts and false light invasion of privacy. The Applicant settled the remaining three claims in October 2009. Plaintiffs Vespremi and Glaudell filed a notice of appeal of the dismissed claims on December 3, 2009.
[redacted]	[redacted]
[redacted]	[redacted]

(b) (4) [redacted]

[redacted]

[redacted]

[redacted]

Donald Van Randall — In April 2009, the Applicant received a complaint of racial discrimination / retaliation filed with the California Department of Fair Employment and Housing by former battery plant worker Donald Van Randall. The Department has ruled in the Applicant's favor and dismissed the complaint.

(b) (4) [redacted]

[redacted]

(b) (4)

[redacted]

(b) (4)

[redacted]

[redacted]

(b) **Judgments, Orders or Decrees against the Applicant**

Fisker I

Tesla Motors, Inc. filed claims against Fisker Coachbuild, LLC, Fisker Automotive, Inc., Henrik Fisker, and Bernhard Koehler (collectively, "Fisker") on April 14, 2008 in California Superior Court, San Mateo County. The dispute was moved to arbitration, and concluded in October 2008. The arbitrator ruled for Fisker and awarded Fisker reimbursement of Fisker's attorney's fees and expenses in the amount of $1.1 million (as part of the arbitrator's ruling, the arbitrator found that the Applicant's claims were neither brought nor pursued in good faith). On February 6, 2009 the Applicant paid the judgment award of $1,169,067.40 to Fisker Automotive and Fisker Coachbuild for reimbursement of Fisker's attorney's fees and expenses.

(c) **Settlement or Forbearance Agreements**

Magna Powertrain

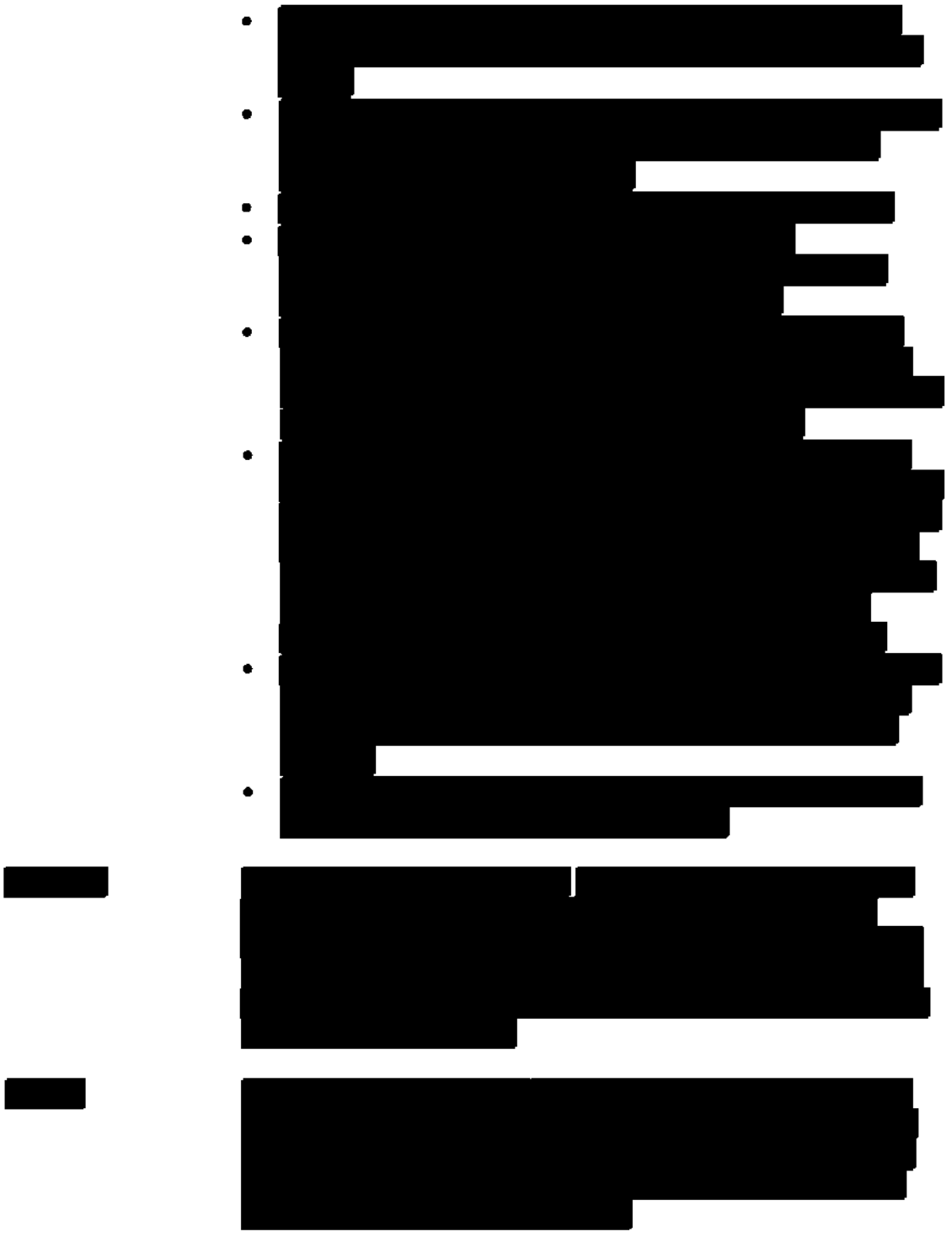
Magna Powertrain USA, Inc. filed a claim for breach of contract against Tesla Motors, Inc. on April 3, 2008 in California Superior Court in San Mateo County, California. On December 12, 2008 both parties had executed a settlement agreement requiring the Applicant to pay undisclosed amounts to Magna in two installments. The Applicant paid the first installment on January 12, 2009 and the case was stayed pending payment of the second installment, which was paid in June 2009. The case was dismissed with prejudice on July 6, 2009.

(b) (4) [redacted]

[redacted]

[redacted]

(b) (4)



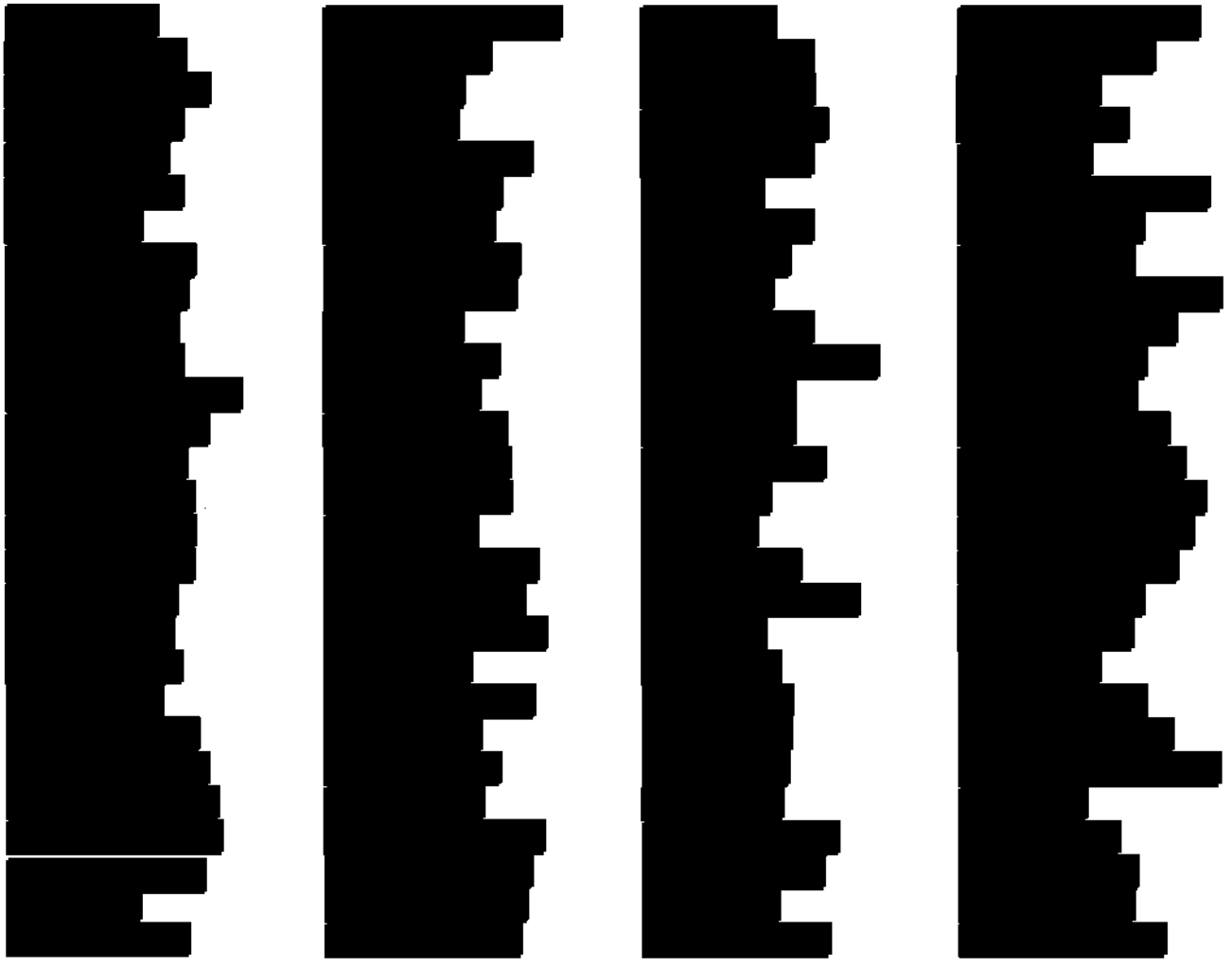
SCHEDULE D-7
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

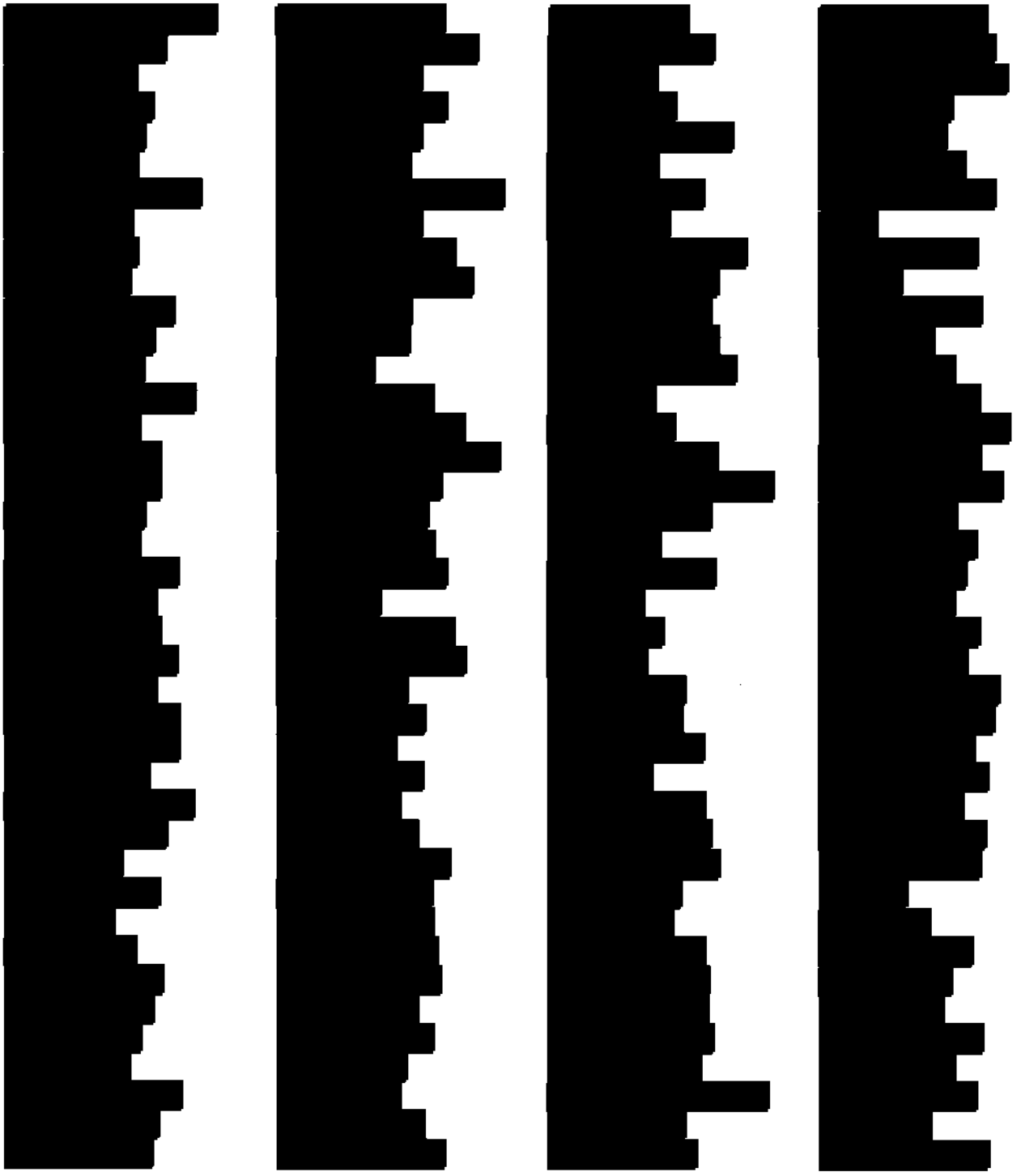
(i) Employment and Labor Agreements

Employment Agreements (as of November 30, 2009) (the individuals listed below have all signed invention assignment agreements containing confidentiality agreements and certain of them have signed offer letters which constitute their employment agreements)*

*all invention assignment agreements signed by the individuals listed on this Schedule (other than Elon Musk), as well as other past or present members, managers, officers, directors, employees and consultants other than those at page 83 of this Schedule are of the same representative sample "Employee Proprietary Information and Invention Agreement" for each respective entity provided in the data room. Elon Musk's agreement has been separately provided.

Tesla Motors, Inc.



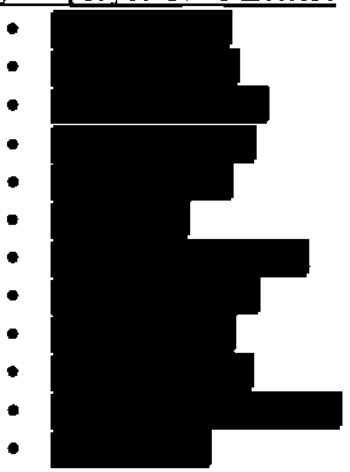


Tesla Motors Limited

Tesla Motors Taiwan Limited

Tesla Motors GmbH

Key Employee Offer Letters



Severance Agreements*

*with the exception of the Applicant's severance agreements with Martin Eberhard and Ze'ev Drori, all severance agreements signed by the individuals listed on this Schedule, as well as other past or present members, managers, officers, directors, employees and consultants are of the same representative sample "Separation Agreement" provided in the data room.

Last Name	First Name	Term Date
[redacted]	[redacted]	10/17/2008
		3/10/2009
		11/1/2007
		7/22/2009
		12/19/2008
		1/8/2008
		1/8/2008
		1/11/2008
		9/22/2009
		10/17/2008
		10/17/2008
		1/4/2008
		10/17/2009
		4/21/2008
		10/17/2008
		3/2/2009
		10/17/2008
		10/17/2008
		11/30/2009
		10/17/2008
		10/17/2008
		10/17/2008
		10/17/2008
		12/31/2009
		2/11/2009
		2/29/2008
		2/29/2008
		10/2/2009
		10/17/2008
		1/10/2008

Last Name	First Name	Term Date
[redacted]	[redacted]	1/2/2008
		1/15/2008
		1/15/2008
		10/17/2008
		11/3/2008
		10/2/2009
		10/17/2008
		3/7/2008
		10/17/2008
		12/19/2008
		1/7/2008
		12/31/2009
		8/14/2009
		4/20/2009
		7/31/2009
		3/13/2009
		1/10/2008
		2/15/2008
		10/17/2008
		1/7/2008
		11/19/2009
		8/4/2008
		10/17/2008
		10/17/2008
		11/30/2007
		1/10/2008
		10/17/2008
		8/29/2008
		1/11/2008
		10/17/2008
		10/17/2008
		7/2/2009
		1/10/2008
		12/31/2009
		10/17/2008
		1/11/2008
		10/17/2008

Last Name	First Name	Term Date
[redacted]		10/17/2008
		3/13/2009
		12/19/2008
		11/9/2007
		8/3/2009
		10/17/2008
		4/1/2009
		10/17/2008
		2/25/2008
		10/17/2008
		11/3/2008
		6/6/2008
		10/17/2008
		10/27/2009
		12/31/2009
		12/31/2009
		12/31/2009
		2/29/2008
		12/12/2008
		1/2/2008
		7/19/2008
		7/19/2008
		10/17/2008
		10/17/2008
		10/2/2009
		10/17/2008
		9/22/2009
		4/28/2009
		1/9/2009
		10/17/2008
		11/3/2008
		10/17/2008
		10/17/2008
		11/3/2008
		10/17/2008
		7/24/2009
		1/10/2008

Last Name	First Name	Term Date
[redacted]		11/3/2008
		11/3/2008
		11/3/2008
		7/3/2009
		10/17/2008
		12/28/2009
		11/3/2008
		10/17/2008
		1/30/2009
		1/30/2009
		10/17/2008
		12/19/2008
		4/10/2009
		4/17/2009
		7/31/2009
		10/17/2008
		10/17/2008
		10/17/2008
		10/17/2008
		10/17/2008
		10/27/2009
		6/19/2009
		10/17/2008
		12/19/2008
		10/17/2008
		12/19/2008
		5/12/2009
		11/3/2008
		12/3/2009
		7/20/2007
		10/17/2008
		8/8/2008
		8/5/2009
		11/30/2009
		5/9/2008
		10/17/2008
		10/17/2008

Last Name	First Name	Term Date
[redacted]		12/31/2009
		2/2/2008
		3/6/2009
		11/3/2008
		3/3/2008

Retention Agreements

- None.

Consulting and Management Agreements

- [redacted]
- [redacted]

Non-Compete Agreements

- None.

Non-Solicitation Agreements

- U.S. employees only. Non-solicitation agreements U.S. employees sign are included in Section 8 of the Proprietary Invention and Assignment Agreement.

Indemnification Agreements

Name	Title
[redacted]	

Collective Bargaining Agreements

- None.

Labor Disputes

- None.

Individuals Who Have Not Executed an Invention Assignment Agreement

- [redacted]
- [redacted]

Individuals Who Have Not Executed a Confidentiality Agreement

- [redacted]

Individuals Who Have Not Executed Non-Compete or Non-Solicitation Agreements

- [redacted]
- [redacted]

* No employee has executed a Non-Compete Argeement

Summary of Procedures to Ensure Individuals will Enter into Invention Assignment Agreement, Confidentiality, Non-Compete and Non-Solicitation Agreements

- The Applicant requires all new employees to execute Proprietary Invention and Assignment Agreements, which contain Confidentiality and Non-Solicitation Agreements (but not Non-Compete Agreements, which are not enforceable in California). All contractors are required to execute an Independent Contractor Agreement or are retained through Volt Technical Services, which has a blanket agreement covering confidentiality and non-solicitation for all employees of the Applicant.

(ii) List of Key Employees

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

SCHEDULE D-8
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Employee Benefit Plans

Employee Benefit Plans

Company	Date	Name of Employee Benefit Plan	Type of Employee Benefit Plan
Tesla Motors, Inc.	August 1, 2009	Medical	HMO (Kaiser) HMO / PPO / High-Deductible Health Plan (Anthem / Blue Cross)
Tesla Motors, Inc.	August 1, 2008	Dental	DMO / PPO (Aetna)
Tesla Motors, Inc.	August 1, 2008	Vision	In Network / Out-Network (VSP)
Tesla Motors, Inc.	August 1, 2008	Life & Disability	Group Life (Sun Life Insurance)
Tesla Motors, Inc.	June 14, 2004	401K Plan	Retirements Savings (ADP)
Tesla Motors, Inc.	December 31, 2009	401K Plan	Retirement Savings Account (Fidelity)
Tesla Motors Limited	No date listed	Medical	BUPA - Participating Hospital (UK)

Stock Option/Equity Incentive Plans

- The Applicant provides stock options (both ISOs and nonqualified options) to each of its employees, including employees in the U.S., UK and Taiwan. The options are allocated from a total pool of 42,238,740 shares, which constitutes 15.5% of the total outstanding shares on a fully diluted basis. Options are granted based on the work performed by the employee, and merit increases as may be approved by the Board of Directors. All options (except two options granted to the CEO[1] (b) (4) [redacted] are

[1] One of the options granted to the Applicant's CEO vests as follows: 1/4 of the shares vest immediately upon grant, and the remaning 1/48 vest each month over the subsequent three years, subject to the optionee's continued service through each applicable vesting date. The other option granted to the Applicant's CEO vests as follows: 1/4 of the shares subject to the option vest upon successful completion of the Model S engineering prototype; 1/4 of the shares subject to the option vest upon successful completion of the Model S vehicle prototype; 1/4 of the shares subject to the option vest upon the completion of the first production of the Model S vehicle; and 1/4 of the shares subject to the option vest upon the completion of the production of the 10,000th Model S vehicle.

subject to a four year vesting period and subject to the optionee's continued service, and all options (b) (4) [redacted] granted to new employees at the commencement of their employment have a 12 month "cliff period" upon which the initial 25% are vested. (b) (4) [redacted].

- The Board of Directors of the Applicant has adopted, and expects its stockholders to approve, the Applicant's 2009 Equity Incentive Plan (the "2009 Plan"). The 2009 Plan is not expected to be utilized until after the completion of the Applicant's initial public offering. The 2009 Plan provides for the grant of incentive stock options to the Applicant's employees and any of its subsidiary corporations' employees. The maximum aggregate number of shares that may be issued under the 2009 Plan is 32,000,000 shares of the Applicant's common stock, plus (i) any shares that as of the completion of the Applicant's initial public offering, have been reserved, but not issued under the 2003 Equity Incentive Plan and are not subject to any awards granted thereunder and (ii) any shares subject to stock options or similar awards granted under the 2003 Equity Incentive Plan that expire or otherwise terminate without having been exercised in full and unvested shares issued pursuant to awards granted under the 2003 Equity Incentive Plan that are forfeited to or purchased by the Applicant, with the maximum number of shares to be added to the 2009 Plan pursuant to clauses (i) and (ii) above equal to 37,813,529 shares as of December 4, 2009. The number of shares available for issuance under the 2009 Plan will be annually increased on the first day of each of the Applicant's fiscal years beginning with the 2011 fiscal year, by an amount equal to the least of (x) 16,000,000 shares, (y) 4% of the outstanding shares of the Applicant's common stock as of the last day of the Applicant's immediately preceding fiscal year, or (z) such other amount as the Applicant's Board of Directors may determine.*

*The Applicant does not have any other pension, retirement, deferred compensation, bonus incentive, profit-sharing, change-in-control, stock option or other stock—or equity—related compensation plans (except (b) (4) [redacted]). In October 2006, the Applicant adopted an Enterprise

[2] (b) (4) [redacted].

Management Incentives Sub-Plan (the "Sub-Plan") to the Applicants 2003 Equity Incentive Plan; however the Applicant no longer makes grants under such Sub-Plan.

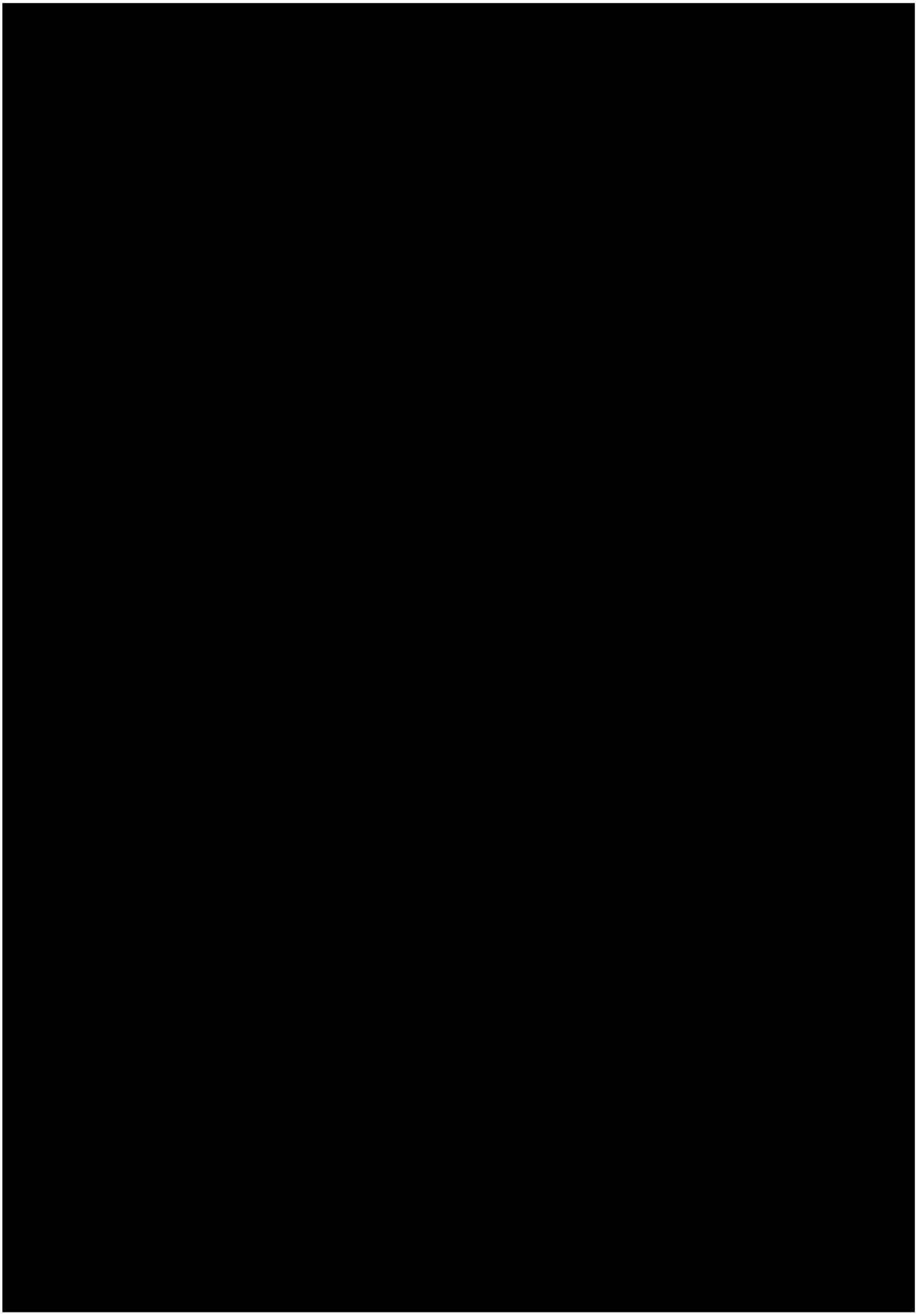
Status of Vesting Schedules for Key Employees

- *See* attached vesting schedule as of January 13, 2010.

ATTACHMENT TO SCHEDULE D-8
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Vesting Schedule

[redacted]



SCHEDULE D-9
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Environmental Matters

(a)

The Applicant did not receive a Clean Air Act (the "CAA") Certificate of Conformity (a "CAA Certificate") for 2009 from the Environmental Protection Agency (the "EPA") for its Tesla Roadster until December 21, 2009. This CAA Certificate covered sales of Tesla Roadsters from December 21, 2009 through December 31, 2009. The Applicant received a CAA Certificate in 2008, and received a CAA Certificate for 2010 on December 31, 2009. Selling vehicles in states covered by Federal requirements under the CAA without a CAA Certificate is a violation of Section 203(a) and may subject a violator to penalties of up to $32,500 per violation and a requirement to recall and remedy any emissions exceedances for those vehicles. Prior to obtaining the CAA Certificate on December 21, 2009, the Company sold 637 vehicles in 2009 in states where a CAA Certificate is required for such sales.

The EPA's Self-Audit Policy provides the ability for companies to self-report violations of federal Environmental Laws and thereby mitigate potential penalties. The Applicant reported the failure to obtain a CAA Certificate for 2009 to the EPA on December 20, 2009, and was issued a CAA Certificate effective December 21, 2009. (b) (4) [redacted] The Applicant and the EPA entered into an Administrative Settlement Agreement and Audit Policy Determination on January 11, 2010 (the "Settlement Agreement") whereby the Applicant agreed to pay a civil administrative penalty in the sum of $275,000.00 and agreed to treat 2009 vehicles sold prior to the December 21, 2009 CAA Certificate as if they were covered by a valid CAA Certificate for warranty and emissions purposes. The EPA has closed the matter and considers the violations resolved as of the date of the Settlement Agreement. All vehicles sold prior to obtaining the CAA Certificate in 2009 are now considered lawfully sold with no impediments to further registration, use or subsequent sale.

In addition, failure to obtain a timely CAA Certificate had the potential to impact the ability of Applicant's customers to obtain $7500 in federal tax credits for electric vehicles sold between January 1, 2009 and December 20, 2009, which tax credits have been advertised as available to Applicant's customers. Upon discovery of the issue and in

concert with addressing the EPA violations, Applicant was in communication with the Internal Revenue Service (the "IRS") to determine whether Applicant's customers were able to utilize the tax credit despite Applicant not having obtained the CAA Certificate for 2009 at the time such customer purchased a Tesla Roadster. As of January 7, 2010, the IRS confirmed that the IRS would allow Applicant's customers to obtain the $7500 federal tax credit for vehicles purchased in 2008 and 2009.

(b)

- None

SCHEDULE D-10
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Tax Matters

(a)

- None.

(b)

- None.

(c)

- None.

SCHEDULE D-11
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Permits and Other Regulatory Matters

(a) Regulatory Regimes

Regulatory Regime	NHTSA and EU equivalent	Dept. of Transp., PHMSA, UN	UL and CSA	ZEV Laws	EPA (State And Federal)	State Dealer Franchise Laws	US and UK Customs	SEC and State Securities Laws	IRS, state tax entities and EU country equivalents	OSHA, EDD
Focus	*Federal Motor Vehicle Safety Standards, and Other Requirements EU WVTA EU, Commission Regulation (EC) NO 1400/2002 of 31 July 2001*	*Compliance with UN transport-ation standards for lithium ion cells*	*Safety Certification*	*Laws promoting zero emission vehicles*	*Regulations on the testing and certification of vehicle emissions, range, and energy uses*	*50 State "patch work" of laws regulating distribution and sale of motor vehicles, manufacturers, distributors and dealers*	*Her Majesty's Revenue and Customs regulates VAT & imports and exports; US Customs Laws*		*Various tax laws*	
Vehicle Design	X		x	x	x					
Vehicle Testing	X	x	x		x		x			
Vehicle Production	X	x								x
Vehicle Sales				x	x	x	x	x	x	
Vehicle Service	X									
Fundraising								x		
Powertrain			x	x		x				
Employees									x	x
Import and Export		x					x			
Compensation									x	x

Regulation by the National Highway Traffic Safety Administration

The Applicant is subject to and complies with numerous regulatory requirements established by the National Highway Traffic Safety Administration ("NHSTA") including all applicable federal motor vehicle safety standards ("FMVSS"). A manufacturer must self-certify that a vehicle meets all applicable FMVSSs, as well as the NHTSA bumper standard, before it can be imported into or sold in the United States.

There are numerous FMVSSs that apply to the Applicant's vehicles. Examples of these requirements include:

- Crash-worthiness requirements—including applicable and appropriate level of vehicle structure and occupant protection in frontal, side and interior impacts including through use of equipment such as seat belts and airbags which must satisfy applicable requirements;

- Crash avoidance requirements – including appropriate steering, braking, electronic stability control, and equipment requirements (e.g., headlamps, tail lamps, conspicuity requirements, which lighting must conform to various photometric and performance requirements)

- Electric vehicle requirements—limitations on electrolyte spillage, battery retention, and avoidance of electric shock following specified crash tests. (In addition to the FMVSS requirements, the Applicant has incorporated numerous other safety protections into the battery pack for the Tesla Roadster (the "Roadster") to assure the safety of that system, including isolating the high voltage system from the rest of the vehicle.)

- Windshield defrosting and defogging— defined zones of the windshield must be cleared within a specified timeframe;

- Rearview mirrors— rearward areas that must be visible to the driver via the mirrors;

- Controls and displays;

Several FMVSS regulations that NHTSA has promulgated or amended recently contain phase-in provisions requiring increasing percentages of a manufacturer's vehicles to comply over a period of several model years. Those FMVSSs generally allow low volume manufacturers (those who manufacture fewer than 5,000 vehicles annually for sale in the United States) and limited line manufacturers (those who sell three or fewer carlines in the United States) to defer compliance until the end of the phase-in period. The Applicant currently qualifies as both a low volume manufacturer and a limited line manufacturer, and as a result, the Applicant is currently exempt from certain requirements, such as some new advanced airbag requirements, the advanced side impact requirements, and the electronic stability control requirements, until the end of the

applicable phase-in periods. In addition, the Applicant applied for, and was granted, an exemption from certain other advanced air bag requirements. Based on testing, engineering analysis, and other information, the Applicant has certified that the Roadster complies with all applicable NHTSA standards by affixing a certification label to each Roadster sold.

The Applicant is also required to comply with other NHTSA requirements, including the Corporate Average Fuel Economy standards, consumer information labeling requirements, Early Warning Reporting requirements regarding warranty claims, field reports, death and injury reports and foreign recalls, and owner's manual requirements. The Applicant complies with all applicable NHTSA requirements.

The Applicant's Roadsters sold in Europe are subject to European Union safety testing regulations. Many of those regulations, referred to as European Union Whole Vehicle Type Approval ("WVTA"), are different from the federal motor vehicle safety standards applicable in the United States and may require redesign and/or retesting. The Applicant's Roadsters are currently approved for sale on a limited basis in the European Union via the Small Series WVTA, which permits the manufacture and sale in the European Union of no more than 1,000 vehicles per year. The Applicant plans to keep European sales of the Applicant's Roadsters at less than 1,000 vehicles per year, and has no plans to commence testing its Roadsters for the WVTA to assure compliance with the European Union requirements to permit unlimited sales. The Applicant also plans to keep Australian and Japanese sales of the Applicant's Roadsters at a low volume, and has no plans to comply with the Australian and Japanese requirements to permit high volume sales in these jurisdictions.

Regulation by the Environmental Protection Agency and the California Air Resources Board

The Environmental Protection Agency ("EPA") requires vehicles sold to be covered by a Certificate of Conformity (a "Certificate") or a California Executive Order (an "Executive Order") issued by the California Air Resources Board ("CARB") with respect to emissions. The Certificate is required for vehicles sold in states covered by the Clean Air Act's standards and the Executive Order is required for vehicles sold in states that have sought and received a "waiver" from the EPA to utilize California standards in lieu of Clean Air Act standards. The California standards for emissions control for certain regulated pollutants for new vehicles and engines sold in California are set by CARB. States that have adopted the California standards as approved by EPA also recognize the Executive Order for sales of vehicles.

The sale of the Applicant's Roadsters have been covered by an Executive Order issued by CARB, which permits sales in California and other states that have adopted California standards, and on January 7, 2010, an Executive Order was issued by CARB to cover the 2010 Model Year Roadster. With respect to vehicles sold in other states, the EPA has issued to the Applicant a Certificate for the 2008 Model Year Roadster, a Certificate for

the 2009 Model Year Roadster[3] for sales made between December 21, 2009 and December 31, 2009 and a Certificate for the 2010 Model Year Roadster. The Applicant did not obtain a Certificate for the period of January 1, 2009 through December 20, 2009; however, on January 11, 2010, the Applicant and the EPA entered into an Administrative Settlement Agreement and Audit Policy Determination, whereby EPA has agreed to resolve violations of sale of 2009 Model Year Roadster between January 1, 2009 and December 20, 2009 that were not covered by either a Certificate or an Executive Order, as described in Schedule D-9. These vehicles are now considered lawfully sold with no impediments to further registration, use or subsequent sale. Additional details as to the failure to obtain the Certificate for 2009 are set forth on Schedule D-9.

The EPA also requires that electric vehicles be subject to range testing to accurately determine the number of miles that a vehicle can be driven on a single charge. An independent lab retained by the Applicant performed the test in 2008, and it determined at that time that the Roadster has a combined city and highway range of approximately 244 miles on a single battery charge for combined city and highway driving. Pursuant to regulations issued by the Federal Trade Commission, the Applicant provides range information on a label affixed to each vehicle. The Applicant has been notified that the range testing methodology may change in 2010 so any range estimates may be adversely affected.

Regulation Regarding Battery Safety and Testing

The battery used in the Applicant's vehicles conforms to regulations that govern safety and commerce for a variety of "dangerous goods" (which includes Li-ion batteries) that may present a risk in transportation. The governing regulations adopted by the U.S. Department of Transportations' Pipeline and Hazardous Materials Safety Administration ("PHMSA") are based on the UN Recommendations on the Safe Transport of Dangerous Goods Model Regulations, and related UN Manual Tests and Criteria. The regulations vary by mode of transportation when these items are shipped (for example, ocean vessel, rail, truck, or aircraft). To the best of the Applicant's knowledge, the Applicant is in compliance with all applicable regulations of the PHMSA. Additionally, the Applicant received permission from PHMSA in 2007 to fly the production battery and cars containing it on cargo aircraft.

The Applicant has completed the applicable tests for its prototype and production batteries, including:

- Altitude simulation: simulating air transport;
- Thermal cycling: assessing cell and battery seal integrity;

[3] Note that certain vehicles sold in 2009 were marketed as 2010 Model Year Roadsters, but these vehicles were labeled and had approvals as 2009 Model Year Roadsters for purposes of compliance with EPA and CARB regulations.

- Vibration: simulating vibration during transport;
- Shock: simulating possible impacts during transport;
- External short circuit: simulating an external short circuit; and
- Overcharge: evaluating ability of a rechargeable battery to withstand overcharging (test performed on the Metro battery pack for the SMART vehicle, but not the Tesla Roadster battery pack).

In addition, the Applicant has conducted other internal tests and observations on its batteries, including impact, penetration and exposure to open flame. Based upon its tests and observations, the Applicant believes that the likelihood of any field failures of the battery will be low.

The cells in the Roadster battery are composed mainly of lithium metal oxides. The cells meet the requirements set forth by the Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment 2002/95/EC (commonly referred to as the Restriction of Hazardous Substances Directive). The cells do not contain any lead, mercury, cadmium, hazardous materials, heavy metals, or toxic materials.

The battery pack is also recyclable. The Applicant has adopted a recycling plan to maximize the amount of materials that can be reused; maximize the amount of materials that can be recycled; and minimize energy consumption utilized during the transportation and recycling process. The recycling process is primarily a mechanical and chemical one. As a result, the Applicant believes it will be able to recycle about 60% of the battery materials and reuse a further 10% (by weight), and landfill the plastics, which comprises about 25% of the battery.

In addition, the Applicant's battery packs include packaging for the lithium ion cells. This packaging includes trace amounts of various hazardous chemicals whose use, storage and disposal is regulated under federal law.

Regulation Regarding Automakers and Dealers

Dealer Registration

State law regulates the manufacture and sale of automobiles, and most states require automakers and dealers to register with the state. The Applicant is registered as both a manufacturer and dealer in Florida, Washington State, California, Colorado and Illinois (where it is also registered as a repairer), and its New York subsidiary is registered as a dealer in New York. The Applicant currently makes all sales to residents of other states from California.

The Applicant plans to register and engage in activities as a dealer in other states as appropriate and to the extent possible as it opens additional Tesla Locations (as defined below).

U.S. state laws have varying requirements relating to the sales of vehicles. Because the state motor vehicle industry laws were written with the traditional model of motor vehicle distribution in mind, the Applicant's new model of vehicle distribution subjects the Applicant to potential inquiries and investigations from state motor vehicle regulators who may question whether the Applicant's model complies with applicable state motor vehicle industry laws.

Some of these state laws clearly apply to, and prohibit certain aspects of the Applicant's distribution model. For example, in those states that prohibit a manufacturer from owning, operating or acting as a dealer, the Applicant would be prohibited from operating a motor vehicle dealership or otherwise selling vehicles directly to consumers from locations within the state.

Another area of the Applicant's new distribution model that may be questioned under state motor vehicle industry laws relates to states in which the Applicant establishes a Gallery location instead of a dealership. Based upon the broad and sometimes unclear definitions in the state statutes of what constitutes "dealership activities", a regulator may question whether the Applicant's activities at Gallery locations constitute acting as a Motor Vehicle Dealer. The Applicant currently operates its location in Boulder, Colorado as a Gallery. The Applicant may choose to operate as a Gallery while the dealer license or zoning variance is pending. Such operation as a Gallery may impede the Applicant's ability to do business in that state.

Other motor vehicle industry laws designed for the old model may, on their face, present issues relative to the Applicant's model. Many states, for example, require that a manufacturer of goods sold in a state must provide service and repair facilities within the state. Notwithstanding this requirement, considering the accommodations the Applicant is offering its customers with its mobile service, and the fact that the Applicant's dealership locations will contain service capabilities, it is likely that the Applicant could structure its mobile service model to the satisfaction of states with these types of provisions. (California, for example, expressly provides that "The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter.") Also, related to the Applicant's mobile service model, some of the states which prohibit a manufacturer from acting as a dealer specifically include a prohibition on a manufacturer providing service in that provision. (The Nevada and Louisiana statutes, for example, both provide that a manufacturer may not own or operate a facility for the repair or maintenance of vehicles). These states may require a revision to the Applicant's mobile service model (e.g. appointing independent service providers to provide mobile service).

The Applicant's plans to sell cars to residents of states where the Applicant is not registered as a dealer over the internet are another area of the Applicant's model in which the application of laws written for the traditional model of motor vehicle distribution to the Applicant's new model subjects us to potential inquiries and investigations from state motor vehicle regulators. The question of whether vehicles can be sold over the internet into a specific state is a largely untested area and is very fact specific, with the answer potentially varying depending upon numerous factors including whether the Applicant has a physical presence in the state, whether the Applicant has employees, advertises or conducts other activities in the state, how the transaction is structured, the volume of sales into the state, and whether the state in question prohibits manufacturers from acting as a dealer. As a result, it is possible that these practices will subject the Applicant to potential inquiries and investigations from state motor vehicle regulators who may question whether the Applicant's model complies with applicable state motor vehicle industry laws. Texas, for example, takes a very broad interpretation of what it means for a manufacturer to act as a dealer and is very proactive in investigating potential violations of these prohibitions in its statutes. Internet sales can also implicate other statutory provisions designed with the old model in mind (e.g. the Kansas statute provides that "no manufacturer may deliver a motor vehicle to a person in this state, unless such motor vehicle is delivered to the person by a vehicle dealer licensed to do business in the state of Kansas" and Indiana requires that "A dealer who sells a motor vehicle through the use of the Internet or other computer network shall deliver the motor vehicle to the customer at the place of business of the dealer in Indiana.") Provisions such as these may require that certain aspects of the Applicant 's model be restructured.

Ability to Collect and Use Reservation Payments

The Applicant has historically taken reservation fees for the Roadster and has begun taking reservation fees from customers to purchase the planned Model S. The Applicant also believes that such practice is permitted by the laws of California and other states, but has not sought clarification from applicable authorities.

For instance, California law restricts the ability of licensed auto dealers to advertise or take deposits for vehicles before they are available. In November 2007, the Applicant became aware that the New Motor Vehicle Board of the California Department of Transportation raised questions over whether the Applicant's reservation policies comply with these laws. Since that time, the Applicant has not received any communications on this topic from the New Motor Vehicle Board or the California Department of Motor Vehicles (the "DMV"), which has the power to enforce these laws. Based upon the advice of and consultation with regulatory counsel, the Applicant believes that its policies for the Roadster comply with these California laws, but the question is not free from doubt and there can be no assurance that the DMV would not review these practices or conclude that, in their view, the Applicant's vehicle reservation or advertising practices violate the law. If the Applicant's vehicle reservation or advertising practices were found to violate the law, the Applicant may be required, among other things, to refund the Applicant's customers' paid reservation fees, and the Applicant potentially could lose the Applicant's license as a dealer in California. Other states and jurisdictions may have similar laws.

The Applicant is currently soliciting and using reservation fees for working capital. In 2006 and 2007, the Applicant accepted membership fees for a Roadster Club; however the Roadster Club membership terms did not explicitly indicate that the Applicant can use the proceeds for operating capital. Current reservation agreements explicitly provide that the Applicant can use the reservation fees for working capital. At no time previously has the Applicant segregated reservation fees or Roadster Club or Model S membership fees into a separate account. However, Washington State requires that reservation fees or other payment received from residents in the State of Washington must be placed in a segregated account until delivery of the vehicle, which account must be unencumbered by any liens from creditors of the Applicant and may not be used for working capital. The Applicant established such account on January 7, 2009. If required by other applicable state law, the Applicant will establish and maintain a single account for all reservation fees received from customers in any state, which will be separated from the Applicant's capital accounts and not be used for operating capital. The applicant is currently not aware of any other state where such a separate account will have to be maintained for receipt of reservation fees.

Direct Retail Sales

The Applicant has established retail sales operations or gallery-type showrooms ("Tesla Locations") in Los Angeles, California, Menlo Park, California, Seattle, Washington, New York, New York, Boulder, Colorado, Chicago, Illinois, Dania Beach, Florida, London, England, Monte Carlo, Monaco, and Munich, Germany. The California, Florida, Washington, Colorado and New York Departments of Motor Vehicles and the Illinois Secretary of State have issued to the Applicant the manufacturers' and/or dealers' licenses required to sell its vehicles to retail purchasers in California, Florida, Washington, Colorado, New York and Illinois respectively. In Illinois, the Applicant must also be licensed in the county in which the Tesla Location is located.

The Applicant is also subject to various other laws and regulations, including those relating to consumer protection, including financing of automobiles, advertising, "lemon laws" and automobile warranties, and consumer privacy.

(b) Other Agreements or Arrangements with Governmental Authorities Relating to Incentives

State of California — In a letter dated June 23, 2008, the Governor of California encouraged the Applicant to locate its vehicle manufacturing facility in California in exchange for various benefits available to California-based manufacturers

- Tax-Free Investment in Manufacturing Equipment for ZEVs
- Clean Technology Workforce Development Funds
- Enterprise Zone (EZ) Tax Incentives

- Alternative and Renewable Fuel and Vehicle Technology Program

- Zero-Emission Vehicle Program

CAEATFA Arrangement

The Applicant has an arrangement with the California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA"), which is summarized as follows:

Background

- CAEATFA provides financial assistance for facilities needed to develop and commercialize advanced transportation technologies, including electric vehicles and ultralow emission vehicles, that conserve energy, reduce air pollution, and promote economic development and jobs.

- The Applicant manufactures electric, zero emissions vehicles and parts designed for electric zero emissions vehicles. The Applicant desires to equip at least two facilities located in California for the manufacturing of electric vehicles and electric vehicle parts.

- The Applicant will apply to CAEATFA for financial assistance for certain transactions.

- The transactions contemplated by and between the Applicant and CAEATFA are designed to be exempt from the State of California sales and use tax, pursuant to Revenue and Taxation Code § 6010.8.

- CAEATFA will provide reasonable assistance to the Applicant to ensure that the State Board of Equalization ("SBE") will agree that certain purchases by the Applicant from vendors of the Equipment are exempt from California state and local sales and use taxes under Article 13, Section 35(b) of the California Constitution, Revenue and Taxation Code § 6352 and SBE Regulation 1667 (18 Cal. Code Regs. § 1667).

Process

- Upon completion of the purchase by the Applicant of Equipment, the Applicant conveys and CAEATFA acquires, all right, title, and interest in such Equipment (the "Conveyance"). The Applicant will notice CAEATFA for the full purchase price for the equipment.

- Immediately following the conveyance to CAEATFA, but in any event not to exceed 10 days from the initial conveyance by the Applicant to CAEATFA, CAEATFA will convey such Equipment back to the Applicant (the "Reconveyance").

- The Parties agree that there will be no fees for the Conveyance or the Reconveyance other than those set forth in Section 10201 of Title 4 of the California Code of Regulations. The Equipment will remain in the possession of the Applicant. CAEATFA agrees that it will not impose or otherwise permit any liens on the Equipment. The Parties agree that there will be multiple Conveyance and Reconveyance transactions throughout the Term of this Agreement. The Parties also agree that in no event shall the aggregate asset price of assets so conveyed and re-conveyed under this agreement exceed $320 million.

SBE Opinion

- The Applicant has received written advice from the SBE satisfying the requirements of Revenue and Taxation Code § 6596 indicating that purchases of the Equipment from vendors are exempt from California state and local sales and use taxes under SBE Regulation 1667 (18 Cal. Code Regs. § 1667) and the Conveyance and Reconveyance of the Equipment are exempt from California state and local sales and use taxes under Article 13, Section 35(b) of the California Constitution, Revenue and Taxation Code § 6352 and Revenue and Taxation Code § 6010.8.

Approval

- The foregoing transaction was approved by CAEATFA's Board of Directors on October 28, 2009. The Title Conveyance Agreement was executed by the Applicant and CAEATFA's Board of Directors on December 23, 2009.

(i) Permits, License, Authorizations, Approvals, Entitlements or Accreditations

Permits for Project P:

- City of Palo Alto, Building Permit (electrical, mechanical, plumbing)
- City of Palo Alto Fire Department (life safety)
- Santa Clara County Sanitary District, Discharge Permit

- Bay Area Air Quality Management District, Permit to Install (chemicals used in operations)
- Bay Area Air Quality Management District, Permit to Operate (boilers and chillers)
- Bay Area Air Quality Management District, Permit to Operate (liquid nitrogen tanks)
- City of Palo Alto, Temporary Occupancy for initial tool installation & occupancy (allows individuals to occupy certain portions of building while construction is still in progress)
- City of Palo Alto, Certificate of Occupancy
- City of Palo Alto and Fire Department, Hazardous Materials Storage Permit (Hazardous Materials Business Plan submitted therewith) part of permit application
- San Francisco Bay Regional Water Quality Control Board Construction Stormwater Permit
- San Francisco Bay Regional Water Quality Control Board Industrial Stormwater Permit (Standard Urban Stormwater Management Plan submitted therewith)
- City of Palo Alto, Business License

Consents from Stanford University (Landlord for Deer Creek Property):

- 6.2: Any outside storage requires Landlord's consent.
- 6.3: Any communications with governmental authorities regarding Applicant's use or the Premises itself require Landlord's consent.
- 9.2: Within 30 days after the execution of the Lease, Landlord was to receive and approve detailed plans for the Tenant Improvement Work. Applicant and Landlord are currently working together with respect to such approvals.
- 9.3: Any alterations to the Building Systems, and any alterations, installations, additional or improvements, structural or otherwise to the Premises ("Alterations"), require Landlord's prior written consent.
- 9.4: Prior to entering into any contract for Tenant Improvement Work or Alterations requiring Landlord's approval, Applicant must obtain Landlord's written approval of the identity of the design architect and general contractor.
- 9.5: Landlord's prior written consent is required for installation, maintenance, removal and use of any communications or computer wires and cables serving the Premises.
- 12.3: Any changes to hazardous materials usage from that described in the Hazardous Materials Business Plan filed with the City of Palo Alto Fire Department requires Landlord's consent.
- 12.3: Any piping for hazardous materials or liquid or gaseous substances must be approved by Landlord.

SCHEDULE D-12
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Intercompany Arrangements

(a)

- Existing payments made by the Applicant to Tesla Motors Taiwan Limited, Tesla Motors Limited, Tesla Motors GmbH, Tesla Motors Canada Inc. and Tesla Motors S.A.R.L. in advance for services rendered or goods sold, which advance payments are used to cover operating expenses of Tesla Motors Taiwan Limited, Tesla Motors Limited, Tesla Motors GmbH, Tesla Motors Canada Inc. and Tesla Motors S.A.R.L., respectively. In November 2009, such payments made by the Applicant to Tesla Motors Limited totaled $978,166.01. These amounts will be settled on or before March 31, 2010. In November 2009, the Applicant did not make any payments to Tesla Motors Taiwan Limited, Tesla Motors GmbH, Tesla Motors Canada Inc. or Tesla Motors S.A.R.L.

(b)

- Intercompany sales of goods and services made pursuant to the following agreements:

Company	Date	Type of Arrangement	Name of Other Parties	Amount	Maturity/Termination Date
Tesla Motors Taiwan Limited	1/1/2007	Services Agreement	Tesla Motors, Inc.	N/A	Effective for an initial period of two (2) years; automatically renews for successive one (1) year terms on each anniversary of the effective date unless sixty (60) days written notice is provided
Tesla Motors, Inc.	11/23/09	Sales and Distribution Agreement	Tesla Motors S.A.R.L.	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	11/23/2009	Distributor Agreement	Tesla Motors S.A.R.L.	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	8/1/2009	Sales and Distribution Agreement	Tesla Motors Limited	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each

Company	Date	Type of Arrangement	Name of Other Parties	Amount	Maturity/Termination Date
					fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	8/1/09	Service Agreement	Tesla Motors Limited	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	4/16/09	Sales and Distribution Agreement	Tesla Motors GmbH	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	4/16/09	Service Agreement	Tesla Motors GmbH	N/A	Initial term ends December 31, 2009; automatic annual renewal at the end of each fiscal year thereafter unless thirty (30) days written notice is provided
Tesla Motors, Inc.	10/15/2009 (effective as of 12/30/2009)	Dealer Agreement	Tesla Motors New York LLC	N/A	Perpetuity

(c)

- None.

SCHEDULE D-13
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Transactions with Affiliates

- The Applicant has sold Roadsters to the following members of the Board of Directors and individuals affiliated with 5% stockholders:

  - (b) (4)
  - [redacted]
  - [redacted]
  - [redacted]
  - [redacted]
  - [redacted]
  - [redacted]

- The Applicant has accepted reservation fees for Model S vehicles from the following members of the Board of Directors and individuals affiliated with 5% stockholders:

  - Steve Jurvetson
  - Antonio Gracias
  - (b) (4)
  - [redacted]

- Various former or present stockholders of the Applicant have purchased Roadsters at fair market value or have made reservation agreements to purchase Roadsters or Model S vehicles at fair market value.

- The Applicant is party to agreements with certain of its stockholders relating to its Series A Preferred Stock Financing, Series B Preferred Stock Financing, Series C Preferred Stock Financing, Series D Preferred Stock Financing, Series E Preferred Stock Financing and Series F Preferred Stock Financing, consisting of those agreements listed in Schedule A-7(c).

- The Applicant has granted warrants to purchase shares of Series C Preferred Stock and shares of Series E Preferred Stock to certain of its stockholders.

- (b) (4)
- [redacted]

- (b) (4) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted] employment with the Applicant terminated on October 13, 2008. The Board of Directors offered to [redacted]
- (b) (4) [redacted] executed a separation agreement in November 2008 in which he released the Applicant from any claims against the Applicant in exchange for one month's salary.
- Reimbursement Agreement with Deepak Ahuja, Chief Financial Officer, dated October 31, 2008, as amended June 4, 2009, [redacted].
- Reimbursement Agreement with (b) (4) [redacted], dated July 8, 2008 pursuant to which the Applicant will reimburse (b) (4) [redacted] for expenses (not to exceed [redacted]) associated with litigation and arbitration proceedings against his former employer, (b) (4) [redacted]
- The Applicant entered into various agreements with Daimler AG and its affiliates as set forth in subsection (b) of Schedule D-1 hereto.
- On November 23, 3009, the Applicant entered into a Letter of Intent with (b) (4) [redacted] that will enable the Applicant, prior to the execution by the parties of a final, negotiated contract, to proceed with certain initial preparations related to [redacted]
- The Applicant has entered into indemnification agreements with each of its directors.

- The Applicant has entered into offer letters with each of its officers.

- The Applicant has entered into proprietary information and invention assignment agreements with each of its officers.

- The Applicant has an informal arrangement with Space Exploration Technologies Corporation ("SpaceX") for the use of building space and IT services in the facilities of SpaceX. In August 2009, the Applicant began paying for the use of such facilities on a per square foot basis and for the IT services. Monthly payments for such facilities and services amounts to approximately [redacted].

  In addition, SpaceX has from time to time in the past paid expenses on behalf of the Applicant, for which the Applicant has reimbursed SpaceX. Currently, there is approximately [redacted] owed by the Applicant to SpaceX for such arrangements. Applicant does not intend to have any future similar arrangements with SpaceX.

  E. Musk, the Applicant's Chief Executive Officer, is also the Chief Executive Officer and a significant stockholder of SpaceX. S. Jurvetson and K. Musk, both members of the Applicant's board of directors, are also members of the board of directors of SpaceX.

- On October 29, 2009, the Applicant paid Elon Musk an aggregate amount of [redacted] as reimbursement for filing fees in the amount of [redacted] (plus an additional gross-up amount based on the supplemental bonus tax rate) paid by Mr. Musk on behalf of the Elon Musk Revocable Trust dated July 22, 2003 (the "Elon Musk Trust") in connection with a filing made under the Hart Scott-Rodino Antitrust Improvements Act of 1976, as amended, as a result of the acquisition of additional shares of the Applicant's voting securities by the Elon Musk Trust as part of the Applicant's Series E preferred stock financing.

SCHEDULE D-14
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Correspondence with Auditors

(i)

- Letter from Company General Counsel, dated November 13, 2009

(ii)

- Audit Response Letter from Ropers Majeski Kohn Bentley, dated April 3, 2009
- Audit Response Letter from Wilson Sonsini Goodrich & Rosati, P.C., dated April 8, 2009
- Audit Response Letter from Gross Belsky Alonso LLP, dated April 14, 2009
- Audit Response Letter from Schwegman, Lundberg and Woessner, dated April 14, 2009

(iii)

- Tesla Audited Financials 2005
- Auditors Management Letter 2006
- Tesla Audited Financials 2006
- Auditors Management Letter 2007
- Tesla Audited Financials 2007
- Tesla Audited Financials 2008
- Auditors Management Letter 2008
- Review of September 30, 2009 Financials – Dec 3, 2009
- Review of September 30, 2009 Financials – Dec 21, 2009

SCHEDULE D-15
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Other Material Contracts

(a) Indemnification Agreements

- None.

(b) Joint Venture Agreements

- None.

(c) Credit Card Processing Agreements

- PayPal User Agreement (last revised April 8, 2009)
- PayPal Pro / Virtual Termination Agreement (last revised February 11, 2009)
- WellsOne Commercial Card Agreement (July 14, 2009)

(d) Leases of Personal Property

- None.

(e) Other Material Contracts

- Marketing Agreement by and between Tesla Motors, Inc. and Bank of America, N.A., dated as of July 10, 2009.

SCHEDULE E-1
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Completeness of Information Presented

(a)

- As of September 30, 2009, Tesla carries [redacted] on its balance sheet for advance reservation payments from [redacted] and [redacted] customers.

(b)

- [redacted]
- [redacted]

(c)

- None.

SCHEDULE E-2
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Due Authorization; No Defaults or Consents

(a)

- None.

(b)

- None.

(c)

- *See* Schedule 6.6(a).

SCHEDULE 6.6
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Required Consents

(a)

Consents from Board of Directors of the Applicant (to be obtained on or prior to the Principal Instrument Delivery Date):

- Resolutions adopted by the Board of Directors authorizing the transaction, including the issuance of DOE warrants and related amendments to the Certificate of Incorporation

Consents from Stockholders of the Applicant (to be obtained on or prior to the Principal Instrument Delivery Date):

To Increase Authorized Common Stock:

- A majority of all outstanding Common Stock and Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis)

To Increase Authorized Preferred Stock:

- A majority of all outstanding Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis)

To Increase Authorized Series E Preferred Stock:

- A majority of the outstanding Series B Preferred Stock, voting as a separate class
- 2/3 of the outstanding Series C Preferred Stock, voting as a separate class
- 2/3 of the outstanding Series D Preferred Stock, voting as a separate class
- 2/3 of the outstanding Series E Preferred Stock, voting as a separate class; and
- Blackstar Investco LLC

To Grant DOE registration rights in connection with the Warrants:

- The vote of a majority of the outstanding Registrable Securities (as defined in the Applicant's Fifth Amended and Restated Investors' Rights Agreement (the "Investors' Rights Agreement"))

To Amend Article IV, Section (B)(6)(g)(iii) of the charter to clarify DOE not to be considered a stockholder/affiliate for purposes of that section:

- A majority of all outstanding Common Stock and Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis).
- A majority of all outstanding Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis)

To waive pre-emptive rights granted to stockholders with respect to the issuance of the Warrant and any shares issuable upon exercise thereof:

- Consent of the holders of at least 2/3 of the Registrable Securities (as defined above) then outstanding

Consent from Sole Member of Tesla New York Motors LLC (the "Guarantor") (to be obtained on or prior to the Principal Instrument Delivery Date):

- Written consent of the Sole Member of the Guarantor authorizing the transaction, including the execution and delivery of the Security Agreement and Guarantee

(b)

Permits for Project P (none of the following permits are required to be obtained on or prior to the Principal Instrument Delivery Date):

- City of Palo Alto, Building Permit (electrical, mechanical, plumbing)
- City of Palo Alto Fire Department (life safety)
- Santa Clara County Sanitary District, Discharge Permit
- Bay Area Air Quality Management District, Permit to Install (chemicals used in operations)
- Bay Area Air Quality Management District, Permit to Operate (boilers and chillers)
- Bay Area Air Quality Management District, Permit to Operate (liquid nitrogen tanks)
- City of Palo Alto, Temporary Occupancy for initial tool installation & occupancy (allows individuals to occupy certain portions of building while construction is still in progress)
- City of Palo Alto, Certificate of Occupancy
- City of Palo Alto and Fire Department, Hazardous Materials Storage Permit (Hazardous Materials Business Plan submitted therewith) part of permit application
- San Francisco Bay Regional Water Quality Control Board Construction Stormwater Permit
- San Francisco Bay Regional Water Quality Control Board Industrial Stormwater Permit (Standard Urban Stormwater Management Plan submitted therewith)
- City of Palo Alto, Business License

Consents from Stanford University (Landlord for Deer Creek Property):

- 6.2: Any outside storage requires Landlord's consent.
- 6.3: Any communications with governmental authorities regarding Applicant's use or the Premises itself require Landlord's consent.

- 9.2: Within 30 days after the execution of the Lease, Landlord was to receive and approve detailed plans for the Tenant Improvement Work. Applicant and Landlord are currently working together with respect to such approvals.
- 9.3: Any alterations to the Building Systems, and any alterations, installations, additional or improvements, structural or otherwise to the Premises ("Alterations"), require Landlord's prior written consent.
- 9.4: Prior to entering into any contract for Tenant Improvement Work or Alterations requiring Landlord's approval, Applicant must obtain Landlord's written approval of the identity of the design architect and general contractor.
- 9.5: Landlord's prior written consent is required for installation, maintenance, removal and use of any communications or computer wires and cables serving the Premises.
- 12.3: Any changes to hazardous materials usage from that described in the Hazardous Materials Business Plan filed with the City of Palo Alto Fire Department requires Landlord's consent.
- 12.3: Any piping for hazardous materials or liquid or gaseous substances must be approved by Landlord.

See the permits and other regulatory matters the Applicant and its Subsidiaries are required to obtain or comply with disclosed under Schedule D-11.

SCHEDULE 6.34
TO TESLA MOTORS, INC. INFORMATION CERTIFICATE

Completeness of Information

- Borrower failed to disclose its failure to obtain a Certificate of Conformity for 2009 from the Environmental Protection Agency for its Tesla Roadster. Additional details regarding this failure are set forth in Schedule D-9.

CLOSING CHECKLIST
Tesla ATVM Program Loan

PRINCIPAL INSTRUMENT DELIVERY DATE: January 20, 2010

The following checklist sets forth the documents to be delivered and/ or obtained in connection with the initial documentary closing under the Conditional Commitment Letter (the "Commitment Letter") and the Term Sheet (as defined in the Commitment Letter), dated as of June 23, 2009, between **UNITED STATES DEPARTMENT OF ENERGY ("DOE")** and **TESLA MOTORS, INC.** (the "Borrower"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Loan Arrangement and Reimbursement Agreement between DOE and the Borrower ("LAR").

ABBREVIATION	FULL NAME
Borrower and Subsidiaries	
Borrower	Tesla Motors, Inc.
Subsidiary Guarantor	Tesla Motors New York LLC
Foreign Subsidiaries	Tesla Motors Ltd. Tesla Motors GMBH Tesla Motors Taiwan Tesla Motors Canada Inc. Tesla Motors S.A.R.L.
Arranger and Lender	
DOE	United States Department of Energy
FFB	Federal Financing Bank
Collateral Trustee ("CT")	Midland Loan Services, Inc.
Attorneys	
WSGR	Wilson Sonsini Goodrich and Rosati LLP, as counsel to Borrower
PW	Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to DOE

ID	No.	Document Description	Section in Term Sheet	Section in LAR	Draft	Circulation Date	Signatures	Status
	1	**LOAN DOCUMENTS**						
LD-1	A	**Loan Arrangement and Reimbursement Agreement**	19(a)	5.1(a)(i)	5704080 v28	PW	☑DOE ☑Borrower	FINAL
LD-1xA	**1**	Annex A Definitions			Included	PW		Included in LAR
LD-1x9.1	**2**	Annex 9.1 Financial Covenants		9.1	Included	PW		Included in LAR
LD-1x9.4	**3**	Annex 9.4 Additional Conditions to Permitted Equity Proceeds Investments		9.4	Included	PW		Included in LAR
LD-1A	**4**	Exhibit A Form of Note P		Annex A	see FFB-3P	FFB		Copy of FFB-3P to be attached as Exhibit
LD-1B	**5**	Exhibit B Form of Note S		Annex A	see FFB-3S	FFB		Copy of FFB-3S to be attached as Exhibit
LD-1C	**6**	Exhibit C Form of Drawstop Notice		2.4(b)	5831983v3	PW		FINAL
[LD-ID]	**7**	Exhibit D Form of Guarantee		Annex A	See LD-2	PW		Copy of LD-2 to be attached as Exhibit
[LD-IE]	**8**	Exhibit E Form of Subordination Agreement		Annex A	See LD-3	PW		Copy of LD-3 to be attached as Exhibit
[LD-1F]	**9**	Exhibit F Form of Collateral Trust Agreement		Annex A	See SD-1	PW		Copy of SD-1 to be attached as Exhibit
[LD-1G]	**10**	Exhibit G Form of Security Agreement		Annex A	See SD-2	PW		Copy of SD-2 to be attached as Exhibit
LD-1H	**11**	Exhibit H Form of Subsidiary Joinder Agreement		Annex A	5822311v7	PW		FINAL
LD-1I-1	**12**	Exhibit I-1 Form of Collateral Schedules		Annex A		PW/WSGR		FINAL
LD-1I-2	**13**	Exhibit I-2 Form of Collateral Supplement		Annex A	5853825v8	PW		FINAL
LD-1J	**14**	Exhibit J Form of Collateral Access Agreement (Landlord)		Annex A	5740569v6	PW		FINAL
LD-1K	**15**	Exhibit K Form of Collateral Access Agreement (Warehouse)		Annex A	5831096v6	PW		FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

LD-1L	16	Exhibit L Form of Warrants		Annex A	See WR-1	WSGR		Copy of WR-1 to be attached
LD-1M	17	Exhibit M Form of Registration Rights Agreement		Annex A	See WR-2	WSGR		Copy of WR-2 to be attached
LD-1N	18	Exhibit N Form of Charter Amendment		Annex A	See WR-3	WSGR		Copy of WR-3 to be attached
LD-1O	19	Exhibit O Form of Solvency Certificate		5.1(c)	5831654v5	PW		FINAL
LD-1P	20	Exhibit P Form of Blocked Account Control Agreement		2.12	5834853 v10	PW		FINAL
LD-1Q	21	Exhibit Q Form of Lobbying Certificate		5.1(u)	5831978v3	PW		FINAL
LD-1R	22	Exhibit R Form of Lobbying Disclosure		5.1(u)	5831985v1	PW		FINAL
LD-1S-1	23	Exhibit S-1 Form of Borrower Certificate (Closing)		5.1		WSGR		FINAL
LD-1S-2	24	Exhibit S-2 Form of Borrower Certificate (Financial Documents)		5.1		WSGR		FINAL
	B	**FFB Funding Documents**						
FFB-1	1	**Program Financing Agreement ("PFA")**	19(b)(i)	5.1(a)(ii)(A)		FFB	✓DOE ✓FFB	Previously executed; only one agreement required for whole ATVM program Sent to WSGR on 11/19
FFB-1x1	(a)	Annex 1: Form of Certificate Specifying Authorized Department Officials						Included in PFA
FFB-1x2	(b)	Annex 2: Form of Designation Notice						Included in PFA
FFB-1x3	(c)	Annex 3: Form of NPA			See FFB-2			Included in PFA
FFB-1x4	(d)	Annex 4: Form of Opinion of Secretary's Counsel re: PFA						Included in PFA
FFB-2	2	**Note Purchase Agreement ("NPA")**	19(b)(ii)	5.1(a)(ii)(B)		FFB	☑DOE ☑FFB ☑Borrower	FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

FFB-2A	(a)	Exhibit A Form of FFB Advance Request		2.3(a)(i)(B)		FFB		Included in NPA; This form is for FFB only; a different form is required for DOE – See SUP-1A
FFB-2B	(b)	Exhibit B Form of Certificate Specifying Authorized Borrower Officials				FFB		Copy of FFB-5 to be attached as Exhibit
FFB-2C	(c)	Exhibit C Forms of Note P and Note S				FFB		Copies of FFB-3P and FFB-3S to be attached as Exhibit
FFB-2D	(d)	Exhibit D Form of Opinion of Borrower's Counsel re: Borrower's Instruments				FFB		Copy of FFB-10 to be attached as Exhibit
FFB-2E	(e)	Exhibit E Form of Opinion of Secretary's Counsel re: Secretary's Affirmation				FFB		Copy of FFB-8 to be attached as Exhibit
FFB-2F	(f)	Exhibit F Form of Secretary's Affirmation				FFB		Copy of FFB-6 to be attached as Exhibit
FFB-2G	(g)	Exhibit G Form of Secretary's Certificate				FFB		Copy of FFB-7 to be attached as Exhibit
FFB-3	**3**	**Future Advance Promissory Notes**						
FFB-3P	(a)	Project P Promissory Note	19(b)(iii)	5.1(a)(ii)(C)		PW/ FFB	☑Borrower	FINAL
FFB-3S	(b)	Project S Promissory Note	19(b)(iii)	5.1(a)(ii)(D)		PW/ FFB	☑Borrower	FINAL
	4	**DOE FFB Documents**						
FFB-4	(a)	Opinion of Secretary's Counsel re: PFA		3.1.2 of PFA		DOE	☑DOE	Previously executed; only one opinion required for whole ATVM program
FFB-5	(b)	Certificate Specifying Authorized Department Officials		3.1.3 of PFA 5.1(b) of LAR		DOE	☑DOE	Previously executed; only one certificate required for whole ATVM program
FFB-6	(c)	Secretary's Affirmation		3.3.1(b) of NPA		DOE	☑DOE	FINAL
FFB-7	(d)	Secretary's Certificate		3.3.1(c) of NPA		DOE	☑DOE	FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

FFB-8	(e)	Opinion of Secretary's Counsel re: Secretary's Affirmation		3.3.2 of NPA		DOE	☑ DOE	FINAL
FFB-9	(f)	Designation Notice		3.2.1 of NPA		DOE	☑ DOE	FINAL
	5	**Borrower FFB Documents**						
FFB-10	(a)	Opinion of Borrower's Counsel re: Borrower's Instruments		3.2.2 of NPA 5.1(b) of LAR		WSGR	☑WSGR	FINAL
FFB-11	(b)	Certificate Specifying Authorized Borrower Officials		3.2.3 of NPA 5.1(b) of LAR		Borrower	☑Borrower	FINAL
FFB-12	**6**	**FFB Acceptance Notice**		5.1 of the NPA 5.2 of LAR		FFB	☑ FFB	FINAL; NOT a condition to Principal Instrument Delivery Date; but rather to be delivered by FFB within 5 Business Days thereafter if it accepts the FFB Documents delivered to it.
	C	**Warrant Documents**						
WR-1	1	Warrants	19(f)/ 22(v)	5.1(a)(v) (A)		WSGR	☑DOE ☑Borrower	FINAL
	(a)	Exhibit A: Warrant Vesting Schedule						Attached to WR-1
	(b)	Notice of Exercise (specified in Section 3(a))						Attached to WR-1
	(c)	Assignment Form						Attached to WR-1
WR-2	2	Registration Rights Agreement	22(v)	5.1(a)(v) (B)		WSGR	☑DOE ☑Borrower	FINAL
	(a)	Annex A: Lock-Up Agreement						Attached to WR-2
WR-3	3	Charter Amendment	22(c)(iii)	5.1(d)		WSGR	☑Borrower	Filed 1/15

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

LD-2	D	**Guarantee Agreement**	19(c)	5.1(a)(iii)(A)	5737552v7	PW	☑Guarantors	FINAL
LD-3	E	**Subordination Agreement**	19(e)	5.1(a)(iii)(B)	5724215v6	PW	☑CT ☑Guarantors ☑Borrower	FINAL
SUP-1	F	**Forms Supplement**	-	5.1(w)				FINAL
SUP-1x1	1	Cover page			5850343v2	PW	☑Guarantors ☑Borrower	
SUP-1A	2	Exhibit A Form of Advance Request		5.1(w)(i)/ 2.3(a)	5831998v9	PW		FINAL
SUP-1B	3	Exhibit B Sample Project Forecast and Overrun Calculation		5.1(w)(ii)/ 2.3(b)(vi)/ 8.2(b)		WSGR		FINAL (same as Term Sheet Exhibit E)
SUP-1C	4	Exhibit C Form of Compliance Certificate		5.1(w)(v)/ 8.1(d)		PW/ WSGR		FINAL
SUP-1D	5	Exhibit D Form of CAEATFA Conveyance/Reconveyance Instrument		5.1(w)(iv)		WSGR		FINAL
SUP-1E	6	Exhibit E Financial Covenant Examples		5.1(w)(viii)		WSGR		FINAL (same as attached to Term Sheet)
SUP-2	G	**Collateral Schedules**	-	5.1(a)(i)(B)		WSGR		
SUP-2A	1	Cover letter		9.4(b)		WSGR	☑Guarantors ☑Borrower	FINAL
	2	Schedule A Organizational Information Schedule		Pledge Collateral Schedules definition		WSGR		*Included in Schedules*
	3	Schedule B Pledged Equity Interests		Pledge 3.4(a)(i)		WSGR		*Included in Schedules*

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

	4	Schedule C Deposit Accounts, Commodity Accounts and Securities Accounts (with Excluded Account and Restricted Deposits information)		Pledge 3.6(a), definitions Investment Property, Securities Accounts		WSGR		*Included in Schedules*
	5	Schedule D Intellectual Property		Pledge Intellectual Property Definition		WSGR		*Included in Schedules*
	6	Schedule E Investment Property		Pledge Investment Property Definition		WSGR		*Included in Schedules*
	7	Schedule F Letter of Credit Rights		Pledge 1.1 3.1(a)(vi)(A)		WSGR		*Included in Schedules*
	8	Schedule G Locations of Collateral		Pledge 3.2(a)		WSGR		*Included in Schedules*
	9	Schedule H Key Life Insurance Policies		Pledge 3.1(a)(vi)(C)		WSGR		*Included in Schedules*
	10	Schedule I Chattel Paper and Instruments		Pledge Chattel Paper definition		WSGR		*Included in Schedules*
	11	Schedule J Commercial Tort Claims		Pledge 1.1, 3.1(a)(vi)(B)		WSGR		*Included in Schedules*
	12	Schedule K Material Excluded Property		LAR 7.6(e)(vi)		WSGR		*Included in Schedules*
	II	**SECURITY DOCUMENTS**[1]						

[1] See Section IV for real estate-related security documents.

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

SD-1	A	**Collateral Trust Agreement**		5.1(a)(iv)(A)	5745530 v14	PW	☑CT ☑Borrower ☑Guarantors	FINAL
SD-1xI	1	Annex I Trust Security Documents						Included in document
SD-1x6.3	2	Schedule 6.3 Notice Addresses						Included in document
SD-1A	3	Exhibit A Form of Notice of Acceleration						Included in document
SD-2	B	**Pledge and Security Agreement**	20	5.1(a)(iv)(B)	5719863 v12	PW	☑CT ☑Borrower ☑Guarantors	FINAL
SD-2A	1	Exhibit A Form of Uncertificated Securities Control Agreement			5727507v6	PW		FINAL
SD-2B	2	Exhibit B Form of Securities Account Control Agreement			5727581v6	PW		FINAL
SD-2C	3	Exhibit C Form of Deposit Account Control Agreement			5727723v6	PW		FINAL
SD-2D	4	Exhibit D Form of Patent Security Agreement			5727763v5	PW		FINAL
SD-2E	5	Exhibit E Form of Trademark Security Agreement			5727771v5	PW		FINAL
SD-2F	6	Exhibit F Form of Copyright Security Agreement			5727781v5	PW		FINAL
SD-3	C	**Copyright Security Agreements [NONE]**	20(f)	5.1(a)(iv)(C)	5834884v1	PW		N/A – obligors do not have any registered copyrights or applications
SD-4	D	**Patent Security Agreements**	20(f)	5.1(a)(iv)(D)		PW		
SD-4A	1	Borrower			5834882v3	PW	☑Borrower ☑CT	FINAL
SD-4AxI	(a)	Schedule I Patents and Patent Applications				WSGR/ Borrower		FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

SD-5	E	**Trademark Security Agreements**	20(f)	5.1(a)(iv) (E)		PW		
SD-5A	1	Borrower			5834885v4	PW	☑Borrower ☑CT	FINAL
SD-5Ax1	(a)	Schedule I Trademark Registrations and Applications				WSGR/ Borrower		FINAL
SD-6	F	**Deposit Account Control Agreements**	20(h)	5.1(a)(iv) (G)		PW/WSGR		FINAL
SD-6A	**1**	City National Bank				WSGR	☑CT ☑Borrower ☑CNB (bank)	FINAL
SD-6B	**2**	Wells Fargo				WSGR	☑CT ☑Borrower ☑Wells Fargo	FINAL
SD-6C	**3**	HSBC (US)			5849788v4	PW	☑CT ☑Borrower ☑HSBC	FINAL
SD-7	G	**Blocked Account Control Agreements**						
SD-7A	**1**	Blocked Account Control Agreement with respect to the Dedicated Account		2.12/5.1	5852848v4	PW	☑CT ☑Borrower ☑PNC Bank	FINAL
SD-7AA	(a)	Exhibit A Form of Withdrawal Request				PW		*Included in document*
SD-7AB	(b)	Exhibit B Form of Transfer				PW		*Included in document*
SD-7AC	(c)	Exhibit C Form of Termination				PW		*Included in document*
SD-7AD	(d)	Exhibit D Permitted Investments (to match definition of "Limited Cash Equivalents" in LD-1)				PW		*Included in document*
SD-7B	**2**	Blocked Account Control Agreement with respect to the Initial Debt Service Account		2.13/5.1	5852873v4	PW	☑CT ☑Borrower ☑PNC Bank	FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

SD-7BA	(a)	Exhibit A Form of Withdrawal Request				PW		*Included in document*
SD-7BC	(b)	Exhibit C Form of Termination				PW		*Included in document*
SD-7BD	(c)	Exhibit D Permitted Investments				PW		*Included in document*
SD-8	H	**Securities Account Control Agreements**	20(h)			PW/WSGR		
SD-8A	**1**	Wells Fargo				WSGR	☑CT ☑Borrower ☑Wells Fargo	FINAL
	III	**PERFECTION-RELATED ITEMS**	20(j)/ 22(f)/ 23(s)					
	A	**UCC Searches and Filings**						
PF-1	**1**	UCC Lien, Tax Lien and Judgment Search Results	22(g)	5.1(h) and (i)		WSGR		FINAL
PF-2	**2**	UCC-3 Termination Statements to be filed	22(i)			WSGR		FINAL
PF3	**3**	UCC-1 Financing Statements to be filed	22(f)	5.1(h)		PW		
PF-3A	(a)	Borrower				PW		FINAL
PF-3B	(b)	Tesla Motors New York LLC				PW		FINAL
PF-4	**4**	Fixture Filings		5.1(g)		PW		Required for any Site owned or leased by the Borrower or any of its Subsidiaries as of the Principal Instrument Delivery Date
PF-4A	(a)	Deer Creek				PW		FINAL
PF-5	B	**Certificate of Title Registrations [NONE]**		5.1(g)		WSGR		N/A-only required if aggregate value in excess of $2,500,000; borrower reps that it doesn't.
PF-6	C	**Intellectual Property Searches and Filings**		5.1(h)				

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

PF-6A	1	IP Search Results	22(g)/ (p)			WSGR		FINAL
PF-6B	2	IP Releases to be filed	22(i)			WSGR		FINAL
[SD-3]	3	Notice of Grant of Security Interest in Copyrights to be filed	22(f)		See SD-3	PW	See SD-3	Same as SD-3
[SD-4]	4	Notice of Grant of Security Interest in Patents to be filed	22(f)		See SD-4	PW	See SD-4	Same as SD-4
[SD-5]	5	Notice of Grant of Security Interest in Trademarks to be filed	22(f)		See SD-5	PW	See SD-5	Same as SD-5
PF-7	D	**Stock Certificates Evidencing Pledged Stock, together with stock powers for each of the pledged entities**	22(f)	5.1(g)		WSGR/ Borrower		
PF-7A	1	Tesla Motors Ltd. (to be certificated - 65%)				WSGR/ Borrower	☑ Company	Original received from Tesla 12/16
PF-7A1	(a)	Stock Power				WSGR	☑ Borrower	FINAL
PF-7B	2	Tesla Motors New York LLC (uncertificated)				WSGR		N/A (general intangible, therefore perfected by UCC-1 filing and no other deliverable required)
PF-7C	3	Tesla Motors Canada Inc. (to be certificated -65%)				WSGR/ Borrower	☑ Company	Original received from Tesla 12/16
PF-7C1	(a)	Stock Power				WSGR	☑ Borrower	FINAL
PF-7D	4	Tesla Motors GMBH (uncertificated)				WSGR		N/A
PF-7D1	(a)	Uncertificated Securities Control Agreement				WSGR/PW	☑CT ☑Borrower ☑Company	FINAL
PF-7E	5	Tesla Motors Taiwan (uncertificated)				WSGR		N/A
PF-7E1	(a)	Uncertificated Securities Control Agreement				WSGR/PW	☑CT ☑Borrower ☑Company	FINAL
PF-7F	6	Tesla Motors S.A.R.L. (uncertificated)				WSGR		N/A

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

PF-7F1	(a)	Uncertificated Securities Control Agreement				WSGR/PW	☑CT ☑Borrower ☑Company	FINAL
PF-7G	7	AC Propulsion (certificated)				WSGR/ Borrower	☑ Company	Original received from Tesla 12/16
PF-7C1	(a)	Stock Power for AC Propulsion				WSGR	☑ Borrower	FINAL
PF-8	E	**[Pledged promissory notes/ debt] [NONE]**	22(f)	5.1(g)		WSGR		N/A - per Schedule C-2 to Information Certificate
	IV	**REAL ESTATE DOCUMENTS[2]**						
RE-1	A	**Collateral Access Agreements[3]**	20(d)(ii)	5.1(a)(iv)(H) / 7.6(d)				
RE-1A	1	Deer Creek			5818545v1	WSGR/ Borrower	☑DOE ☑Landlord ☑Borrower	Stanford and Tesla signature pages received in escrow 12/23
	V	**PROJECT DOCUMENTS**						
PD-1	A	Deer Creek Lease	21	7.9		Borrower		*To be attached to Borrower Certificate for Closing-see CC-3J*
	VI	**OPINIONS**						
OP-1	A	**Legal opinion of WSGR**	22(j)/ 23(p)	5.1(k)(i)		WSGR	☑WSGR	Received
	VII	**FINANCIAL DOCUMENTS**						
FD	A	**Closing Certificate re: Financial Matters**				Borrower	☑Borrower	FINAL PDF RECEIVED
FD-1	1	Certified Historical Financial Statements	22(k)	5.1(l)(i)		Borrower		Included in PDF

[2] This Section lists real estate-related documents that are required for the Principal Instrument Delivery Date. No mortgages are so required pursuant to Section 7.6(e)(iv).

[3] Required only for certain locations as provided in Sections 5.1(a)(iv)(J) and 7.6(d).

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

FD-1A	(a)	Audited consolidated and consolidating Financial Statements of the Borrower and its Subsidiaries, for the Fiscal Year ended December 31, 2008						Included in PDF
FD-1B	(b)	Interim period from January 1, 2009 to the Closing, internally prepared, unaudited Financial Statements of the Borrower and its Subsidiaries for each quarterly period completed prior to 20 days before the Closing						Included in PDF
FD-1C	(c)	Interim period from January 1, 2009 to the Closing, internally prepared, unaudited Financial Statements of the Borrower and its Subsidiaries for each monthly period completed prior to 20 days before the Closing						Included in PDF
FD-2	2	Certification based on Historical Financial Statements	22(k)	5.1(l)(ii)		Borrower		*Included in FD certificate*
FD-3	3	Certified Project Business Plan	5/ 22(l)	5.1(m)		Borrower		FINAL Included in PDF
FD-3A	(a)	Milestones and Completion Dates	5(i)	5.1(m)(i)		Borrower		Included in Business Plan
FD-3B	(b)	Financial Models	5(ii)	5.1(m)(ii)		Borrower		Included in Business Plan
FD-3C	(c)	Description of Financing Plan for Projects and all other cash needs	5(iii)	5.1(m)(iii)		Borrower		Included in Business Plan
FD-3D	(d)	Budgets for Projects	5(iv)	5.1(m)(iv)		Borrower		Included in Business Plan
FD-3E	(e)	A detailed description of the Borrower's current and planned structure and personnel for senior management of the Borrower		5.1(m)(v)		Borrower		Included in Business Plan
FD-4	4	Certification of Eligible Project Costs	22(m)	5.1(n)		WSGR/ Borrower		*Included in FD certificate*
FD-4A	(a)	Exhibit - Eligible Project Costs				Borrower		Included in PDF

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

	VIII	**ORGANIZATIONAL DOCUMENTS**						
OD-1	A	**Secretary's Certificate of the Borrower**	22(b)/ (c)	5.1(d)		WSGR/ Borrower	☑Borrower	FINAL PDF Received
OD-1A		Exhibit A – Certificate of Incorporation of Borrower, as amended (with filed charter amendment attached)				WSGR/ Borrower		Included in PDF
OD-1B		Exhibit B - Bylaws of Borrower				WSGR/ Borrower		Included in PDF
OD-1C		Exhibit C - Resolutions of the Board of Borrower with respect to the transaction				WSGR/ Borrower		Included in PDF
OD-1D		Exhibit D - Resolutions of the Shareholders of Borrower with respect to the transaction				WSGR/ Borrower		Included in PDF
OD-1E-1		Exhibit E-1 - Good Standing of Borrower (Delaware)				WSGR/ Borrower		Included in PDF
OD-1E-2		Exhibit E-2 – Foreign Qualification and Good Standing of Borrower (California)				WSGR/ Borrower		Included in PDF
OD-1E-3		Exhibit E-3– Foreign Qualification and Good Standing of Borrower (Colorado)				WSGR/ Borrower		Included in PDF
OD-1E-4		Exhibit E-4 – Foreign Qualification and Good Standing of Borrower (Florida)				WSGR/ Borrower		Included in PDF
OD-1E-5		Exhibit E-5 - Foreign Qualification and Good Standing of Borrower (Illinois)				WSGR/ Borrower		Included in PDF
OD-1E-6		Exhibit E-6 - Foreign Qualification and Good Standing of Borrower (New York)				WSGR/ Borrower		Included in PDF
OD-1E-7		Exhibit E-7 - Foreign Qualification and Good Standing of Borrower (Washington)				WSGR/ Borrower		Included in PDF
OD-1F		Exhibit F – Incumbency for Borrowers				WSGR/ Borrower	Authorized Signatories	Included in PDF
		Exhibit G – Incumbency for Tesla Motors S.A.R.L.				WSGR/ Borrower	Authorized Signatory	Included in PDF

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

OD-2	B	**Secretary's Certificate of Tesla Motors New York LLC**	22(b)/ (c)	5.1(d)		WSGR/ Borrower	☑Guarantor	FINAL PDF Received
OD-2A		Exhibit A- Certificate of Incorporation/ Formation of Guarantor				WSGR/ Borrower		Included in PDF
OD-2B		Exhibit B- Bylaws/ Operating Agreements of Guarantor				WSGR/ Borrower		Included in PDF
OD-2C		Exhibit C- Resolutions Adopted by Sole Member of Guarantor				WSGR/ Borrower		Included in PDF
OD-2D		Exhibit D- Good Standing of Guarantor in jurisdiction of organization				WSGR/ Borrower		Included in PDF
OD-2E		Exhibit E – Incumbency				WSGR/ Borrower	Authorized Signatories	Included in PDF
	IX	**CLOSING CERTIFICATES**						
CC-1	A	**Solvency Certificate**	25(f)	5.1(c)		WSGR/ Borrower	☑Borrower	FINAL
CC-2	B	**Updated Information Certificate**[4]		5.1(e)		WSGR	☑Borrower	FINAL PDF received
	[redacted]	Schedule A-1: Organizational Structure Chart						Included in PDF
	[redacted]	Schedule A-2: Company Identification						Included in PDF
	[redacted]	Schedule A-3: Other Names						Included in PDF
	[redacted]	Schedule A-4: Fundamental Changes						Included in PDF
	[redacted]	Schedule A-5: Foreign Qualifications						Included in PDF
	[redacted]	Schedule A-6: Directors and Officers						Included in PDF

[4] Certification referred to in Section 5.1(e) is included in CC-3.

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

	7	Schedule A-7: Stock Ownership and Other Equity Interests						Included in PDF
	(a)	Attachment: Capitalization Table						Included in PDF
	8	Schedule B-1: Real Property Owned or Leased						Included in PDF
	9	Schedule B-2: Third Party Locations of Collateral						Included in PDF
	10	Schedule B-3: Future Project Locations						Included in PDF
	11	Schedule C-1: Cash; Accounts; Other Investment Property						Included in PDF
	12	Schedule C-2: Promissory Notes; Instruments; Chattel Paper						Included in PDF
	13	Schedule C-3: Intellectual Property						Included in PDF
	14	Schedule C-4: Vehicles and Other Titled Assets						Included in PDF
	15	Schedule C-5: Commercial Tort Claims						Included in PDF
	16	Schedule C-6: Special Situations						Included in PDF
	17	Schedule D-1: Sources and Use of Funding; Project Documents						Included in PDF
	18	Schedule D-2: Contracts with Customers and Suppliers						Included in PDF
	19	Schedule D-3: Insurance						Included in PDF
	20	Schedule D-4: Indebtedness						Included in PDF
	21	Schedule D-5: Liens						Included in PDF

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

	22	Schedule D-6: Litigation						Included in PDF
	23	Schedule D-7: Employment						Included in PDF
	24	Schedule D-8: Employee Benefit Plans						Included in PDF
	25	Attachment to Schedule D-8: Vesting Schedule for Key Employees						Included in PDF
	26	Schedule D-9: Environmental Matters						Included in PDF
	27	Schedule D-10: Tax Matters						Included in PDF
	28	Schedule D-11: Permits and Other Regulatory Matters						Included in PDF
	29	Schedule D-12: Intercompany Arrangements						Included in PDF
	30	Schedule D-13: Transactions with Affiliates						Included in PDF
	31	Schedule D-14: Correspondence with Auditors						Included in PDF
	32	Schedule D-15: Other Material Contracts						Included in PDF
	33	Schedule E-1: Completeness of Information Presented						Included in PDF
	34	Schedule E-2: Due Authorization; No Defaults or Consents						Included in PDF
	35	Schedule 6.6: Required Consents						Included in PDF
	36	Schedule 6.34: Completeness of Information						Included in PDF
CC-2B	37	**Redline of final Information Certificate against June 23, 2009 version**	5.1(e)(i)					FINAL PDF Received

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

CC-3	D	**Borrower Certificate for Closing**				WSGR/ Borrower	☑Borrower	FINAL PDF Received
CC-3A	1	Certification re Information, including in (a) Application, (b) Information Certificate and (c) redlined Information Certificate	22(d)	5.1(f)(i)				*Included in closing cert*
CC-3B	2	Certification re Eligibility (Borrower and Projects)	22(u)	5.1(f)(ii)				*Included in closing cert*
CC-3C	3	Certification re No Judgment Liens or Debt in Delinquent Status	22(w)	5.1(i)				*Included in closing cert*
CC-3D	4	Certification re No Indebtedness or Redeemable Stock Outstanding	22(h)	5.1(j)				*Included in closing cert*
CC-3E	5	Certification re Consents and Waivers required for performance of obligations under the Transaction Documents	22(n)	5.1(o)				*Included in closing cert*
CC-3F	6	Evidence of IP rights necessary for Projects	22(p)	5.1(q)				*Included in closing cert*
CC-3G	7	Evidence of Exchange Risk strategy	22(q)	5.1(r)				Included in PDF
CC-3H	8	Evidence of Availability of Funds to carry out each Project and to satisfy the Cash Equity Condition	22(r)	5.1(s)				*Included in closing cert*
CC-3I	9	Evidence of Representations and Warranties made by Borrower are true		5.1(v)				*Included in closing cert*
CC-3J	10	Confirmation of No Amendment to Deer Creek Lease		5.1(x)				*Included in closing cert* Lease included in PDF
CC-3K	11	Authorized Transmitter Schedule		Annex A				*Included in closing cert*
CC-4	E	**Lobbying Certificate**	22(x)	5.1(u)		WSGR/ Borrower	☑Borrower	FINAL
CC-5	F	**Lobbying Disclosure**	22(x)	5.1(u)		WSGR/ Borrower	☑Borrower	Received

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS

CC-6	G	**Certification from Insurance Advisor re: maintaining Required Insurance**	22(o)	5.1(p)		WSGR/ Borrower	☑Insurance Advisor	FINAL
CC-6A	1	Evidence of Required Endorsements	31	5.1(p)				RECEIVED ENDORSEMENTS
CC-7	H	**Certificate of Understanding re: Amendment to Certificate of Incorporation**		7.23		WSGR/ Borrower	☑Borrower	FINAL
	X	**OTHER CLOSING CONDITIONS**						
	A	**Payment of Facility Fee**	22(t)	5.1(t)/ 3.2		WSGR/ Borrower		Wire sent 1/19
	B	**[Other Documents and Information] [NONE]**	22(y)	5.1(bb)				N/A-any requested documents have been listed elsewhere on this checklist
	C	**Davis Bacon Side Letter**		5.1(z)			☑DOE ☑Borrower	Signature page received
	D	**Follow-up Diligence Items**	22(a)	5.1(aa)				
DIL-1	1	Amendment to CNB Lease		5.1(j)		Borrower	✓Borrower ✓CNB	Executed copy recd 12/01
DIL-2	2	Information regarding equipment in connection with the California Alternative Energy and Advanced Transportation Financing Authority				Borrower		Completed
DIL-3	3	Existing Letters of Credit				Borrower		
DIL-3A	(a)	CNB #1 (as amended)				Borrower		FINAL
DIL-3B	(b)	Amendment to Wells Fargo				Borrower		FINAL
DIL-3C	(c)	CNB #2 (as amended)				Borrower		FINAL

KEY: CC – CLOSING CERTIFICATE ITEMS
DIL – ADDITIONAL DILIGENCE ITEMS
FD – FINANCIAL DOCUMENTS
FFB – FFB DOCUMENTS
LD – PRIMARY LOAN DOCUMENTS
OD – ORGANIZATIONAL DOCUMENTS
OP – OPINIONS
PD – PROJECT DOCUMENTS
PF – PERFECTION RELATED ITEMS
RE – REAL ESTATE DOCUMENTS
SD – SECURITY DOCUMENTS
SUP – FORMS/DISCLOSURE SUPPLEMENTS
WR – WARRANT DOCUMENTS