

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2011

OR

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

Commission File Number: 001-34756

**Tesla Motors, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**3500 Deer Creek Road**  
**Palo Alto, California**  
(Address of principal executive offices)

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

**94304**  
(Zip Code)

**(650) 681-5000**  
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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

As of October 31, 2011, there were 104,298,634 shares of the registrant's Common Stock outstanding.

TESLA MOTORS, INC.  
FORM 10-Q FOR THE QUARTER ENDED SEPTEMBER 30, 2011

INDEX

	<u>Page</u>
<b>PART I. <a href="#">FINANCIAL INFORMATION</a></b>	
Item 1. <a href="#">Financial Statements</a>	3
<a href="#">Condensed Consolidated Balance Sheets as of September 30, 2011 and December 31, 2010</a>	3
<a href="#">Condensed Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 2011 and 2010</a>	4
<a href="#">Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2011 and 2010</a>	5
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	6
Item 2. <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	20
Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	34
Item 4. <a href="#">Controls and Procedures</a>	35
<b>PART II. <a href="#">OTHER INFORMATION</a></b>	
Item 1. <a href="#">Legal Proceedings</a>	35
Item 1.A. <a href="#">Risk Factors</a>	36
Item 2. <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>	82
Item 3. <a href="#">Defaults Upon Senior Securities</a>	82
Item 4. <a href="#">Removed and Reserved</a>	82
Item 5. <a href="#">Other Information</a>	82
Item 6. <a href="#">Exhibits</a>	82
<b><a href="#">SIGNATURES</a></b>	83

[Table of Contents](#)**PART I. FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS**

**Tesla Motors, Inc.**  
**Condensed Consolidated Balance Sheets**  
**(in thousands, except share and per share data)**

	September 30, 2011 (Unaudited)	December 31, 2010
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 213,328	\$ 99,558
Short-term marketable securities	65,060	—
Restricted cash	55,305	73,597
Accounts receivable	18,250	6,710
Inventory	49,216	45,182
Prepaid expenses and other current assets	10,962	10,839
Total current assets	<u>412,121</u>	<u>235,886</u>
Operating lease vehicles, net	11,672	7,963
Property, plant and equipment, net	248,122	114,636
Restricted cash	5,754	4,867
Other assets	22,581	22,730
Total assets	<u>\$ 700,250</u>	<u>\$ 386,082</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable	\$ 53,627	\$ 28,951
Accrued liabilities	32,685	20,945
Deferred revenue	2,266	4,635
Capital lease obligations, current portion	388	279
Reservation payments	65,215	30,755
Total current liabilities	<u>154,181</u>	<u>85,565</u>
Common stock warrant liability	8,189	6,088
Capital lease obligations, less current portion	661	496
Deferred revenue, less current portion	3,536	2,783
Long-term debt	225,000	71,828
Other long-term liabilities	14,565	12,274
Total liabilities	<u>406,132</u>	<u>179,034</u>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock; \$0.001 par value; 221,903,982 shares authorized; no shares issued and outstanding	—	—
Common stock; \$0.001 par value; 2,000,000,000 shares authorized as of September 30, 2011 and December 31, 2010; 104,188,831 and 94,908,370 shares issued and outstanding as of September 30, 2011 and December 31, 2010, respectively	104	95
Additional paid-in capital	881,941	621,935
Accumulated other comprehensive loss	(24)	—
Accumulated deficit	<u>(587,903)</u>	<u>(414,982)</u>
Total stockholders' equity	<u>294,118</u>	<u>207,048</u>
Total liabilities and stockholders' equity	<u>\$ 700,250</u>	<u>\$ 386,082</u>

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

**Tesla Motors, Inc.**  
**Condensed Consolidated Statements of Operations**  
**(in thousands, except share and per share data)**  
**(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>Revenues</b>				
Automotive sales	\$ 43,235	\$ 23,350	\$ 115,891	\$ 67,906
Development services	14,431	7,891	48,976	12,552
Total revenues	57,666	31,241	164,867	80,458
<b>Cost of revenues</b>				
Automotive sales	32,752	19,457	90,241	56,581
Development services	7,690	2,488	20,866	4,467
Total cost of revenues	40,442	21,945	111,107	61,048
Gross profit	17,224	9,296	53,760	19,410
<b>Operating expenses</b>				
Research and development	54,083	26,698	147,776	55,379
Selling, general and administrative	27,618	20,432	76,545	59,224
Total operating expenses	81,701	47,130	224,321	114,603
Loss from operations	(64,477)	(37,834)	(170,561)	(95,193)
Interest income	80	100	166	195
Interest expense	—	(298)	—	(992)
Other income (expense), net	(594)	3,180	(2,150)	(6,770)
Loss before income taxes	(64,991)	(34,852)	(172,545)	(102,760)
Provision for income taxes	87	83	377	210
Net loss	\$ (65,078)	\$ (34,935)	\$ (172,922)	\$ (102,970)
Net loss per share of common stock, basic and diluted	\$ (0.63)	\$ (0.38)	\$ (1.75)	\$ (2.86)
Weighted average shares used in computing net loss per share of common stock, basic and diluted	104,076,830	92,270,721	99,039,709	36,051,610

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

**Tesla Motors, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(in thousands)  
(Unaudited)

	<b>Nine Months Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>
<b>Cash Flows From Operating Activities</b>		
Net loss	\$ (172,922)	\$ (102,970)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	12,115	7,733
Change in fair value of warrant liabilities	2,101	5,610
Stock-based compensation	20,737	13,313
Inventory write-downs	1,420	652
Other	30	—
Changes in operating assets and liabilities		
Accounts receivable	(11,540)	(4,575)
Inventories and operating lease vehicles	(10,831)	(22,869)
Prepaid expenses and other current assets	(1,185)	(3,109)
Other assets	(335)	(818)
Accounts payable and accrued liabilities	37,999	5,862
Deferred development compensation	—	(156)
Deferred revenue	(1,616)	3,374
Reservation payments	34,460	1,821
Other long-term liabilities	2,291	2,599
Net cash used in operating activities	<u>(87,276)</u>	<u>(93,533)</u>
<b>Cash Flows From Investing Activities</b>		
Purchases of marketable securities	(64,952)	—
Payments related to acquisition of Fremont manufacturing facility and related assets	—	(58,710)
Purchases of property and equipment	(143,634)	(23,055)
Withdrawals out of (transfer into) our dedicated Department of Energy account	18,292	(88,130)
Increase in other restricted cash	(887)	(1,852)
Net cash used in investing activities	<u>(191,181)</u>	<u>(171,747)</u>
<b>Cash Flows From Financing Activities</b>		
Proceeds from issuance of common stock in public offerings	172,410	188,842
Proceeds from issuance of common stock in private placements	59,058	50,000
Principal payments on capital leases and other debt	(225)	(233)
Proceeds from long-term debt	153,172	56,557
Proceeds from exercise of stock options and other stock issuances	7,812	741
Deferred common stock and loan facility issuance costs	—	(3,691)
Net cash provided by financing activities	<u>392,227</u>	<u>292,216</u>
Net increase in cash and cash equivalents	113,770	26,936
Cash and cash equivalents at beginning of period	99,558	69,627
Cash and cash equivalents at end of period	<u>\$ 213,328</u>	<u>\$ 96,563</u>
<b>Supplemental disclosure of noncash investing activities:</b>		
Acquisition of property and equipment	568	2,372

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

**Tesla Motors, Inc.**

**Notes to Condensed Consolidated Financial Statements  
(Unaudited)**

**1. Overview of the Company**

Tesla Motors, Inc. (Tesla, we, us or our) was incorporated in the state of Delaware on July 1, 2003. We design, develop, manufacture and sell high-performance fully electric vehicles and advanced electric vehicle powertrain components. We have wholly-owned subsidiaries in North America, Europe and Asia. The primary purpose of these subsidiaries is to market and/or service our vehicles.

Since inception, we have incurred significant losses and have used approximately \$418 million of cash in operations through September 30, 2011. As of September 30, 2011, we had \$278.4 million in cash and cash equivalents and short-term marketable securities. We are currently selling the Tesla Roadster and are developing the Model S sedan which we currently expect to introduce commercially in 2012. We also currently plan to hold a limited showing of the prototype of the Model X crossover by the end of 2011 and to reveal it publicly early in 2012.

To the extent we do not meet our planned sales volumes or future product releases or our existing cash and cash equivalents or short-term marketable securities balances are insufficient to fund our future activities, we will need to raise additional funds. We cannot be certain that additional financing, if and when needed, will be available at terms satisfactory to us, or at all. These condensed consolidated 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.

**Public Offerings and Concurrent Private Placements**

In July 2010, we completed the initial public offering (IPO) of common stock in which we sold a total of 11,880,600 shares of our common stock and received cash proceeds of \$188.8 million from this transaction, net of underwriting discounts and commissions. Concurrent with the closing of our IPO, we also sold 2,941,176 shares of our common stock to Toyota Motor Corporation (Toyota) in a private placement and received cash proceeds of \$50.0 million.

In June 2011, we completed a follow-on offering of common stock in which we sold a total of 6,095,000 shares of our common stock and received cash proceeds of \$172.7 million from this transaction, net of underwriting discounts. Concurrent with this offering, we also sold 1,416,000 shares of our common stock to Elon Musk, our Chief Executive Officer and cofounder, and 637,475 shares of our common stock to Blackstar Investco LLC, an affiliate of Daimler AG (Daimler) and received total cash proceeds of \$59.1 million in the private placements. No underwriting discounts or commissions were paid in connection with these private placements.

**2. Summary of Significant Accounting Policies**

**Basis of Consolidation**

The condensed consolidated financial statements include the accounts of Tesla and its wholly-owned subsidiaries. All significant inter-company transactions and balances have been eliminated in consolidation.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles 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.

**Unaudited Interim Financial Statements**

The accompanying condensed consolidated balance sheet as of September 30, 2011 and the condensed consolidated statements of operations for the three and nine months ended September 30, 2011 and 2010, and the condensed consolidated statements of cash flows for the nine months ended September 30, 2011 and 2010 and other information disclosed in the related notes are unaudited. The condensed consolidated balance sheet as of December 31, 2010 was derived from our audited consolidated financial statements at that date. The accompanying condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and related notes contained in our Annual Report on Form 10-K for the year ended December 31, 2010 filed with the Securities and Exchange Commission.

---

## [Table of Contents](#)

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

### **Revenue Recognition**

We recognize revenues from sales of the Tesla Roadster, including vehicle options and accessories, vehicle service and sales of zero emission vehicle credits, and sales of electric vehicle powertrain components, such as battery packs and battery chargers. We recognize revenue when: (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred and there are no uncertainties regarding customer acceptance; (iii) fees are fixed or determinable; and (iv) collection is reasonably assured.

#### *Multiple Deliverable Revenue Arrangements*

Effective January 1, 2011, we adopted amended accounting standards issued by the Financial Accounting Standards Board (FASB) for multiple deliverable revenue arrangements on a prospective basis for applicable transactions originating or materially modified after January 1, 2011. The new standard changes the requirements for establishing separate units of accounting in a multiple element arrangement and requires the allocation of arrangement consideration to each deliverable to be based on the relative selling price. For fiscal 2011 and future periods, when a sales arrangement contains multiple elements, we allocate revenue to each element based on a selling price hierarchy. The selling price for a deliverable is based on its vendor specific objective evidence (VSOE) if available, third party evidence (TPE) if VSOE is not available, or estimated selling price if neither VSOE nor TPE is available. To date, we have been able to establish the fair value for each of the deliverables within the multiple element arrangements because we sell each of the vehicles, vehicles accessories and options separately, outside of any multiple element arrangements. Therefore, there were no material differences between total revenue reported and pro forma total revenues that would have been reported during the three and nine months ended September 30, 2011, if the transactions entered into or materially modified after January 1, 2011 were subject to previous accounting guidance.

### **Marketable Securities**

During the three months ended September 30, 2011, we purchased marketable securities including commercial paper and corporate debt of \$65.1 million. All marketable securities are designated as available-for-sale and reported at estimated fair value, with unrealized gains and losses recorded in accumulated other comprehensive loss which is included in stockholders' equity. Realized gains and losses on the sale of available-for-sale marketable securities are recorded in other income (expense), net. The cost of available-for-sale marketable securities sold is based on the specific identification method. Interest, dividends, amortization and accretion of purchase premiums and discounts on our marketable securities are included in other income (expense), net. Available-for-sale marketable securities with maturities greater than three months at the date of purchase and remaining maturities of one year or less are classified as short-term marketable securities. Where temporary declines in fair value exist, we have the ability and the intent to hold these securities for a period of time sufficient to allow for any anticipated recovery in fair value.

---

## [Table of Contents](#)

We regularly review all of our marketable securities for other-than-temporary declines in fair value. The review includes but is not limited to (i) the consideration of the cause of the impairment, (ii) the creditworthiness of the security issuers, (iii) the length of time a security is in an unrealized loss position, and (iv) our ability to hold the security for a period of time sufficient to allow for any anticipated recovery in fair value.

### Warranties

We began recording warranty reserves with the commencement of Tesla Roadster sales in 2008. Initially, Tesla Roadsters were sold with a warranty of four years or 50,000 miles. Subsequently, Tesla Roadsters have been sold with a warranty of three years or 36,000 miles. Accrued warranty activity consisted of the following for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
Accrued warranty – beginning of period	\$ 6,289	\$ 4,348	\$ 5,417	\$ 3,757
Warranty costs incurred	(851)	(496)	(2,078)	(1,398)
Provision for warranty	973	1,342	3,072	2,835
Accrued warranty – end of period	<u>\$ 6,411</u>	<u>\$ 5,194</u>	<u>\$ 6,411</u>	<u>\$ 5,194</u>

We provide a warranty on all vehicle and production powertrain component sales, and we accrue warranty reserves at the time a vehicle or production powertrain component is delivered to the customer. Warranty reserves include management's best estimate of the projected costs to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact our evaluation of historical data. We review our reserves at least quarterly to ensure that our accruals are adequate in meeting expected future warranty obligations, and we will adjust our estimates as needed. Warranty expense is recorded as a component of cost of revenues in the condensed consolidated statements of operations. The portion of the warranty provision which is expected to be incurred within 12 months from the balance sheet date is classified as current, while the remaining amount is classified as long-term liabilities.

### Concentration of Risk

Financial instruments that potentially subject us to a concentration of credit risk consist of cash, cash equivalents, marketable securities, restricted cash and accounts receivable. Our cash and cash equivalents are primarily invested in money market funds with high credit quality financial institutions in the United States. At times, these deposits and securities may be in excess of insured limits. We invest cash not required for use in operations in high credit quality securities based on our investment policy. Our investment policy provides guidelines and limits regarding credit quality, investment concentration, investment type, and maturity that we believe will provide liquidity while reducing risk of loss of capital. Investments are of a short-term nature and include investments in corporate debt securities.

As of September 30, 2011 and December 31, 2010, our accounts receivable were derived primarily from sales of powertrain components to Daimler and the development of powertrain systems for Toyota Motor Corporation (Toyota) (see Note 9).

---

## [Table of Contents](#)

The following summarizes the accounts receivable in excess of 10% of our total accounts receivable:

	September 30, 2011	December 31, 2010
Toyota	53%	42%
Daimler	46%	51%

Single source suppliers provide us with a number of components that meet our manufacturing requirements. For example, Lotus Cars Limited (Lotus) is the only manufacturer for certain components, such as the chassis of our Tesla Roadster. In other instances, although there may be multiple suppliers available, many of the components used in our vehicles are purchased by us from a single source. If these single source suppliers fail to satisfy our requirements on a timely basis at competitive prices, we could suffer manufacturing delays, a possible loss of revenues, or incur higher cost of sales, any of which could adversely affect our operating results.

### **Net Loss per Share of Common Stock**

Our basic and diluted net loss per share of common stock is calculated by dividing net loss by the weighted average shares of common stock outstanding for the period. Potentially dilutive shares, which are based on the number of shares underlying outstanding stock options, warrants and other convertible securities, are not included when their effect is antidilutive.

The following table presents the potential common shares outstanding that were excluded from the computation of basic and diluted net loss per share of common stock for the periods presented:

	Nine Months Ended September 30,	
	2011	2010
Period-end stock options to purchase common stock	15,496,749	13,207,367
Period-end DOE warrant to purchase common stock	3,090,111	3,090,111
Period-end common stock subject to repurchase	486	7,278

### **Comprehensive Loss**

Comprehensive loss is comprised of net loss and other comprehensive loss. Other comprehensive loss consists of unrealized gains and losses on our available-for-sale marketable securities that have been excluded from the determination of net loss. Other comprehensive loss for the three and nine months ended September 30, 2011 was \$24,000.

---

[Table of Contents](#)

**Income Taxes**

We estimate our income taxes in each of the tax jurisdictions in which we operate prior to the completion and filing of tax returns for such periods. This process involves estimating actual current tax expense together with assessing temporary differences in the treatment of items for tax purposes versus financial accounting purposes that may create net deferred tax assets and liabilities. Income taxes are completed using the asset and liability method, which requires, among other things, that deferred income taxes be provided for temporary differences between the tax bases of assets and liabilities and their financial statement reported amounts. In addition, deferred tax assets are recorded for the future benefit of utilizing net operating losses, research and development credit carryforwards and temporary differences.

Valuation allowances are established when necessary to reduce our deferred tax assets to the amount we believe is more likely than not to be realized. Because of the uncertainty of the realization of the deferred tax assets, we have recorded a full valuation allowance against our domestic net deferred tax assets.

Unrecognized tax benefits relate to uncertainties in the application of complex global tax regulations. We regularly assess our tax positions in light of significant legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which we do business. We currently do not believe there will be any material changes in our unrecognized tax benefits within the next 12 months.

**Recent Accounting Pronouncements**

In June 2011, the FASB issued an accounting standard update, which revises the manner in which companies present comprehensive income in their financial statements. The new guidance removes the presentation options and requires entities to report components of comprehensive income in either (1) a continuous statement of comprehensive income or (2) two separate but consecutive statements. The guidance is effective for fiscal years, and interim periods within those years beginning after December 15, 2011. Early adoption is permitted. We anticipate adopting the guidance in fiscal 2012. We do not expect the adoption of the guidance to have a material impact on our condensed consolidated financial statements.

In January 2010, the FASB issued updated guidance related to fair value measurements and disclosures which requires a reporting entity to disclose separately the amounts of significant transfers in and out of Level I and Level II fair value measurements and to describe the reasons for the transfers. In addition, in the reconciliation of fair value measurements using Level III inputs, a reporting entity will be required to disclose information about purchases, sales, issuances and settlements on a gross rather than on a net basis. The updated guidance will also require fair value disclosures for each class of assets and liabilities and disclosures about the valuation techniques and inputs used to measure fair value for both recurring and non-recurring Level II and Level III fair value measurements. The updated guidance is effective for interim or annual reporting periods beginning after December 15, 2009, except for the disclosures regarding the reconciliation of Level III fair value measurements, which are effective for fiscal years beginning after December 15, 2010 and for interim periods within those fiscal years. The adoption of this updated guidance did not have a material impact on our condensed consolidated financial statements.

---

[Table of Contents](#)

### 3. Balance Sheet Components

#### Inventory

As of September 30, 2011 and December 31, 2010, our inventory consisted of the following components (in thousands):

	September 30, 2011	December 31, 2010
Raw materials	\$ 15,675	\$ 15,936
Work in process	6,848	4,538
Finished goods	20,025	20,125
Service parts	6,668	4,583
Total	<u>\$ 49,216</u>	<u>\$ 45,182</u>

#### Property, Plant and Equipment, net

As of September 30, 2011 and December 31, 2010, our property, plant and equipment consisted of the following components (in thousands):

	September 30, 2011	December 31, 2010
Computer equipment and software	\$ 8,953	\$ 8,864
Office furniture, machinery and equipment	18,983	12,551
Tooling	16,166	15,913
Leasehold improvements	25,654	13,993
Land	26,391	26,391
Construction in progress	180,354	58,917
	276,501	136,629
Less: Accumulated depreciation and amortization	(28,379)	(21,993)
Total	<u>\$ 248,122</u>	<u>\$ 114,636</u>

Construction in progress is comprised primarily of assets related to the manufacturing of our Model S, including building improvements at our manufacturing facility, the Tesla Factory, in Fremont, California as well as tooling and manufacturing equipment and capitalized interest expense. We will start depreciating these assets upon commencement of our Model S production. Interest expense on outstanding debt is capitalized during the period of significant capital asset construction. Capitalized interest on construction in progress is included in property, plant and equipment, and is amortized over the life of the related assets. During the three and nine months ended September 30, 2011, we capitalized \$1.1 million and \$2.8 million of interest expense, respectively.

Depreciation and amortization expense during the three and nine months ended September 30, 2011 and the three and nine months ended September 30, 2010, was \$3.7 million, \$10.5 million, \$2.7 million and \$7.3 million, respectively.

#### Other Assets

As of September 30, 2011 and December 31, 2010, our other assets consisted of the following (in thousands):

	September 30, 2011	December 31, 2010
Emission credits	\$ 14,508	\$ 14,508
Loan facility issuance costs, net	6,570	7,053
Other	1,503	1,169
Total	<u>\$ 22,581</u>	<u>\$ 22,730</u>

---

[Table of Contents](#)

**Accrued Liabilities**

As of September 30, 2011 and December 31, 2010, our accrued liabilities consisted of the following (in thousands):

	September 30, 2011	December 31, 2010
Accrued purchases	\$ 22,424	\$ 9,731
Payroll and related costs	6,123	6,516
Accrued warranty	2,056	1,725
Taxes payable	1,962	2,686
Other	120	287
Total	<u>\$ 32,685</u>	<u>\$ 20,945</u>

**Other Long-Term Liabilities**

As of September 30, 2011 and December 31, 2010, our other long-term liabilities consisted of the following (in thousands):

	September 30, 2011	December 31, 2010
Environmental liabilities	\$ 5,300	\$ 5,300
Accrued warranty, long-term	4,355	3,692
Deferred rent liability	3,623	2,919
Other	1,287	363
Total	<u>\$ 14,565</u>	<u>\$ 12,274</u>

**4. Fair Value of Financial Instruments**

The carrying values of our financial instruments including cash equivalents, marketable securities, accounts receivable and accounts payable approximate their fair value due to their short-term nature. As a basis for determining the fair value of certain of our assets and liabilities, we established a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows: (Level I) observable inputs such as quoted prices in active markets; (Level II) inputs other than the quoted prices in active markets that are observable either directly or indirectly; and (Level III) unobservable inputs in which there is little or no market data which requires us to develop our own assumptions. This hierarchy requires us to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. Our financial assets that are measured at fair value on a recurring basis consist of cash equivalents and marketable securities. Our liabilities that are measured at fair value on a recurring basis consist of our common stock warrant liability.

All of our cash equivalents and current restricted cash, which are comprised primarily of money market funds, are classified within Level I of the fair value hierarchy because they are valued using quoted market prices or market prices for similar securities. Our short-term marketable securities are classified within Level II of the fair value hierarchy. Our common stock warrant liability (see Note 6) is classified within Level III of the fair value hierarchy.

## Table of Contents

As of September 30, 2011 and December 31, 2010, the fair value hierarchy for our financial assets and financial liabilities that are carried at fair value was as follows (in thousands):

	September 30, 2011				December 31, 2010			
	Fair Value	Level I	Level II	Level III	Fair Value	Level I	Level II	Level III
Money market funds	\$235,381	\$235,381	\$ —	\$ —	\$145,708	\$145,708	\$ —	\$ —
Corporate note	10,111	—	10,111	—	—	—	—	—
Commercial paper	54,949	—	54,949	—	—	—	—	—
Total	<u>\$300,441</u>	<u>\$235,381</u>	<u>\$65,060</u>	<u>\$ —</u>	<u>\$145,708</u>	<u>\$145,708</u>	<u>\$ —</u>	<u>\$ —</u>
Common stock warrant liability	\$ 8,189	\$ —	\$ —	\$8,189	\$ 6,088	\$ —	\$ —	\$6,088
Total	<u>\$ 8,189</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$8,189</u>	<u>\$ 6,088</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$6,088</u>

Our available-for-sale marketable securities classified by security type as of September 30, 2011 consisted of the following (in thousands):

	September 30, 2011			
	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Corporate note	\$ 10,116	\$ —	\$ (5)	\$10,111
Commercial paper	54,968	—	(19)	54,949
Total	<u>\$ 65,084</u>	<u>\$ —</u>	<u>\$ (24)</u>	<u>\$65,060</u>

All of our marketable securities with continuous unrealized losses have been in an unrealized loss position for less than twelve months as of September 30, 2011. We have determined that the gross unrealized losses on our marketable securities as of September 30, 2011 were temporary in nature.

The changes in the fair value of our common stock and convertible preferred stock warrant liability were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2011	2010	2011	2010
Fair value, beginning of period	\$7,849	\$16,709	\$6,088	\$ 1,734
Issuances	—	—	—	6,293
Settlements and Extinguishments	—	(6,962)	—	(6,962)
Change in fair value	340	(3,072)	2,101	5,610
Fair value, end of period	<u>\$8,189</u>	<u>\$ 6,675</u>	<u>\$8,189</u>	<u>\$ 6,675</u>

The estimated fair value of our long-term debt was approximately \$171.7 million (par value of \$225.0 million) and \$53.4 million (par value of \$71.8 million) as of September 30, 2011 and December 31, 2010, respectively.

## 5. Reservation Payments

Reservation payments consist of payments that allow potential customers to hold a reservation for the future purchase of a Tesla Roadster or Model S. These amounts are recorded as current liabilities until the vehicle is delivered. For our Tesla Roadsters manufactured to specification, our current purchase agreement requires the payment of an initial nonrefundable deposit which varies based on the country of purchase. For the Model S, we require an initial refundable reservation payment of at least \$5,000. For Tesla Roadsters purchased directly from our showrooms, no deposit is required. Prior to the three months ended June 30, 2010, our reservation policy was to accept refundable reservation payments from all customers who wished to purchase a Tesla Roadster and require full payment of the purchase price of the vehicle at the time the customer selected their vehicle specifications. During the three months ended June 30, 2010, we changed our policy to require nonrefundable deposits for Tesla Roadsters manufactured to specification at the time a customer enters into a purchase agreement. However, we also occasionally accept refundable reservation payments for the Tesla Roadster if a customer is interested in purchasing a vehicle but not yet prepared to select the vehicle specifications. For customers who have placed a refundable reservation payment with us, the reservation payment becomes a nonrefundable deposit once the customer has selected the vehicle specifications and enters into a purchase agreement. We require full payment of the purchase price of the vehicle only upon delivery of the vehicle to the customer. Amounts received by us as reservation payments are generally not restricted as to their use by us. Upon delivery of the vehicle, the related reservation payments are applied against the customer's total purchase price for the vehicle and recognized in automotive sales as part of the respective vehicle sale.

---

## [Table of Contents](#)

As of September 30, 2011, we held reservation payments for undelivered Model S sedans in an aggregate amount of \$62.1 million and reservation payments for Tesla Roadsters in an aggregate amount of \$3.1 million. As of December 31, 2010, we held reservation payments for undelivered Model S sedans in an aggregate amount of \$28.3 million and reservation payments for Tesla Roadsters in an aggregate amount of \$2.5 million. In order to convert the reservation payments into revenue, we will need to sell vehicles to these customers. All reservation payments for the Model S are fully refundable until such time that a customer enters into a purchase agreement.

### 6. Department of Energy Loan Facility

On January 20, 2010, we entered into a loan facility with the Federal Financing Bank (FFB), and the Department of Energy (DOE), pursuant to the Advanced Technology Vehicles Manufacturing (ATVM) Incentive Program (the DOE Loan Facility). Under the DOE Loan Facility, the FFB has made available to us two multi-draw term loan facilities in an aggregate principal amount of up to \$465.0 million, which will be available to finance up to 80% of the costs eligible for funding for the powertrain engineering and the build out of a facility to design and manufacture lithium-ion battery packs, electric motors and electric components and the development of, and to build out the manufacturing facility for, our Model S sedan. Under the DOE Loan Facility, we are responsible for the remaining 20% of the costs eligible for funding under the ATVM Program for the projects as well as any cost overruns for each project. Loans may be requested under the facilities until January 22, 2013, and we have committed to complete the projects being financed prior to such date. All outstanding amounts under the Loan Facility will be due and payable in September 2019 and September 2022.

Our DOE Loan Facility draw-downs were as follows (in thousands):

	Loan Facility Available for Future Draw-downs	Interest rates
Beginning Balance, January, 2010	<u>\$ 465,048</u>	
Draw-downs received during the three months ended March 31, 2010	(29,920)	2.9% - 3.4%
Draw-downs received during the three months ended June 30, 2010	(15,499)	2.5% - 3.4%
Draw-downs received during the three months ended September 30, 2010	(11,138)	1.7% - 2.6%
Draw-downs received during the three months ended December 31, 2010	<u>(15,271)</u>	1.7% - 2.8%
Remaining Balance, December 31, 2010	<u>393,220</u>	
Draw-downs received during the three months ended March 31, 2011	(30,656)	2.1% - 3.0%
Draw-downs received during the three months ended June 30, 2011	(31,693)	1.8% - 2.7%
Draw-downs received during the three months ended September 30, 2011	<u>(90,822)</u>	1.0% - 1.4%
Remaining Balance, September 30, 2011	<u>\$ 240,049</u>	

The DOE Loan Facility contains customary operational and financial covenants with which we must comply, and impose restrictions on, among other things, additional indebtedness, liens, various fundamental changes to our business (including mergers and acquisitions), payments, expenditures, investments, transactions with affiliates, and other aspects regarding the management of our finances. We are currently in compliance with these covenants. All obligations under the DOE Loan Facility are secured by substantially all of our property.

---

## [Table of Contents](#)

In addition to our obligation to fund a portion of the project costs as described above, we agreed to, and upon completion of our IPO in 2010, set aside \$100 million to fund a separate dedicated account under our DOE Loan Facility. This dedicated account can be used by us to fund any cost overruns for our powertrain and Model S manufacturing facility projects and is used as a mechanism to defer advances under the DOE Loan Facility. This will not affect our ability to draw down the full amount of the DOE loans, but will require us to use the dedicated account to fund certain project costs upfront, which costs may then be reimbursed by loans under the DOE Loan Facility once the dedicated account is depleted, or as part of the final advance for the applicable project. We will be then required to deposit a portion of these reimbursements into the dedicated account, in an amount equal to up to 30% of the remaining project costs for the applicable project, and these amounts may similarly be used by us to fund project costs and cost overruns and will similarly be eligible for reimbursement by the draw-down of additional loans under the DOE Loan Facility once used in full, or as part of the final advance for the applicable project. Depending on the timing and magnitude of our draw-downs and the funding requirements of the dedicated account, the balance of the dedicated account will fluctuate throughout the period in which we plan to make draw-downs under the DOE Loan Facility. Upon completion of our final advance under the DOE Loan Facility, the balance in the dedicated account will be fully transferred out of the dedicated account. As of September 30, 2011 and December 31, 2010, \$55.3 million and \$73.6 million were held in the dedicated account, respectively. As we expect to transfer the current balance out of the dedicated account within one year, we have classified such cash as current restricted cash on the condensed consolidated balance sheets. Pursuant to our DOE Loan Facility, we were not required to hold any portion of the net proceeds from our follow-on public offering and the concurrent private placements completed in June 2011 in the dedicated account.

### ***DOE Warrant***

In connection with the closing of the DOE Loan Facility, we have also issued a warrant to the DOE to purchase up to 9,255,035 shares of our Series E convertible preferred stock at an exercise price of \$2.51 per share. Upon the completion of our IPO on July 2, 2010, this preferred stock warrant became a warrant to purchase up to 3,090,111 shares of common stock at an exercise price of \$7.54 per share. Beginning on December 15, 2018 and until December 14, 2022, the shares subject to purchase under the warrant will vest and become exercisable in quarterly amounts depending on the average outstanding balance of the loan during the prior quarter. The warrant may be exercised until December 15, 2023. If we prepay the DOE Loan Facility in part or in full, the total amount of shares exercisable under the warrant will be reduced.

Since the number of shares ultimately issuable under the warrants will vary depending on the average outstanding balance of the loan during the contractual vesting period, and decisions to prepay would be influenced by our future stock price as well as the interest rates on our loans in relation to market interest rates, we measured the fair value of the warrant using a Monte Carlo simulation approach. The Monte Carlo approach simulates and captures the optimal decisions to be made between prepaying the DOE loan and the cancellation of the DOE warrant. For the purposes of the simulation, the optimal decision represents the scenario with the lowest economic cost to us. The total warrant value would then be calculated as the average warrant payoff across all simulated paths discounted to our valuation date. The prepayment feature which allows us to prepay the DOE Loan Facility and consequently, affect the number of shares ultimately issuable under the DOE warrant was determined to represent an embedded derivative. This embedded derivative is inherently valued and accounted for as part of the warrant liability on our condensed consolidated balance sheets. Changes to the fair value of the embedded derivative are reflected as part of the warrant liability re-measurement to fair value at each balance sheet reporting date.

The warrant is recorded at its estimated fair value with changes in its fair value reflected in other expense, net, until its expiration or vesting. The fair value of the warrant at issuance was \$6.3 million, and along with the DOE Loan Facility fee of \$0.5 million and other debt issuance costs of \$0.9 million, represents a cost of closing the loan facility and is being amortized to interest expense over the expected term of the DOE Loan Facility of approximately 13 years. During the three and nine months ended September 30, 2011, we amortized \$0.2 million and \$0.5 million to interest expense, respectively. During the three and nine months ended September 30, 2010, we amortized \$0.2 million and \$0.4 million to interest expense, respectively.

The DOE warrant will continue to be recorded at its estimated fair value with changes in the fair value reflected in other expense, net, as the number of shares of common stock ultimately issuable under the warrant is variable until its expiration or vesting. As of September 30, 2011 and December 31, 2010, the fair value of the DOE warrant was \$8.2 million and \$6.1 million, respectively. During the three and nine months ended September 30, 2011, we recognized expense for the change in the fair value of the DOE warrant in the amount of \$0.3 million and \$2.1 million, respectively. During the three months ended September 30, 2010, we recognized income for the change in the fair value of the DOE warrant in the amount of \$0.7 million and during the nine months ended September 30, 2010, we recognized expense for the change in the fair value of \$0.4 million through other income (expense), net, in the condensed consolidated statements of operations.

---

[Table of Contents](#)

## 7. Equity Incentive Plans

Effective January 1, 2006, we adopted the fair value method of accounting for stock options granted to employees which requires the recognition of compensation expense for costs related to all share-based payments, including stock options.

Prior to the completion of our IPO, the fair value of the shares of common stock underlying the stock options has historically been determined by the Board of Directors as there was no public market for our common stock. The Board of Directors has determined fair value of the common stock at the time of each grant of options by considering a number of objective and subjective factors including the valuation of comparable companies, sales of convertible preferred stock to unrelated third parties, operating and financial performance, the lack of liquidity of capital stock, and trends in the broader automobile industry.

Subsequent to the completion of our IPO, we account for stock-based compensation by measuring and recognizing the fair value of all stock-based payment awards made to employees based on the estimated grant date fair values, including employee stock options and the employee stock based purchase plan. We use the Black-Scholes option pricing model to estimate the value of employee stock options which requires a number of assumptions to determine the model inputs. These include the expected volatility of the stock's market price, the expected term of the stock-based awards, the expected risk free rate of interest and any dividend yields. As stock-based compensation expense is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. We estimate and adjust forfeiture rates based on a periodic review of recent forfeiture activity and expected future employee turnover. As we have been operating as a public company for a period of time that is shorter than our estimated expected option life, we concluded that our historical price volatility does not provide a reasonable basis for input assumptions within its Black-Scholes valuation model when determining the fair value of its stock options. As a result, our expected volatility is based on the historical volatility of a peer group of publicly traded companies.

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
Cost of sales	\$ 171	\$ 72	\$ 506	\$ 150
Research and development	3,588	1,256	8,904	2,088
Selling, general and administrative	4,127	2,483	11,327	11,075
Total	<u>\$7,886</u>	<u>\$ 3,811</u>	<u>\$20,737</u>	<u>\$13,313</u>

## 8. Information about Geographic Areas

We have determined that we operate in one reporting segment which is the design, development, manufacturing and sales of electric vehicles and electric vehicle powertrain components.

## Table of Contents

The following tables set forth revenues and long-lived assets by geographic area (in thousands):

### Revenues

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
North America	\$31,357	\$ 8,586	\$ 89,282	\$28,105
Europe	24,619	21,317	67,766	49,936
Asia	1,690	1,338	7,819	2,417
Total	<u>\$57,666</u>	<u>\$31,241</u>	<u>\$164,867</u>	<u>\$80,458</u>

During the three and nine months ended September 30, 2011 and 2010, we recognized revenues of \$30.9 million, \$87.5 million, \$7.1 million and \$24.4 million in the United States, respectively.

### Long-lived Assets

	September 30, 2011	December 31, 2010
United States	\$ 254,903	\$ 119,014
International	4,891	3,585
Total	<u>\$ 259,794</u>	<u>\$ 122,599</u>

## 9. Development Services

### Daimler AG

#### Daimler A-Class Program

In 2010, Daimler AG engaged us to assist with the development and production of a battery pack and charger for a pilot fleet of its A-Class electric vehicles to be introduced in Europe during 2011. Through September 30, 2010, we invoiced \$14.1 million and recognized \$11.4 million of the total payments received to date in development services revenue.

As of December 31, 2010, all development work related to the A-Class EV development program had been completed and as such, no further development services revenue were recorded during the nine months ended September 30, 2011.

### Toyota Motor Corporation

#### Toyota RAV4 Program

In July 2010, we and Toyota entered into a Phase 0 agreement to initiate development of an electric powertrain for the Toyota RAV4 EV. Under this early phase development agreement, prototypes would be made by us by combining the Toyota RAV4 model with a Tesla electric powertrain. We began producing and delivering prototypes to Toyota during the three months ended September 30, 2010. During the three months ended September 30, 2010, we recognized \$0.5 million in development services revenue and recorded \$0.2 million in deferred revenues. As of June 30, 2011, we had delivered all prototypes and as such no further development services revenue under the Phase 0 agreement was recorded during the three months ended September 30, 2011. During the nine months ended September 30, 2011, we recognized \$7.6 million in development services revenue under this agreement.

In October 2010, we entered into a Phase 1 contract services agreement with Toyota for the development of a validated powertrain system, including a battery, power electronics module, motor, gearbox and associated software, which will be integrated into an electric vehicle version of the Toyota RAV4. Pursuant to the agreement, Toyota will pay us up to \$60.0 million for the successful completion of certain development milestones and the delivery of prototype samples, including a \$5.0 million upfront payment that we received upon the execution of the agreement. During the three and nine months ended September 30, 2011, we completed various milestones and along with the amortization of our upfront payment and the delivery of certain prototype samples, we recognized \$14.3 million and \$40.9 million in development services revenue, respectively. Through September 30, 2011, we have received total payments from Toyota of \$35.5 million under the Phase 1 contract services agreement under this agreement.

---

[Table of Contents](#)

In July 2011, we entered into a supply and services agreement with Toyota for the supply of a validated electric powertrain system, including a battery, charging system, inverter, motor, gearbox and associated software, which will be integrated into an electric vehicle version of the Toyota RAV4. Additionally, we will provide Toyota with certain services related to the supply of the electric powertrain system. We plan to begin delivery of the electric powertrain system to Toyota for installation into the Toyota RAV4 EV in 2012 and as such, no payments have been received and no revenue has been recognized to date under this agreement. Future revenue to be recognized under this agreement will be recorded in automotive sales. Our production activities under this program are expected to continue through 2014.

## **10. Commitments and Contingencies**

### *Environmental Liabilities*

In May 2010, we entered into an agreement to purchase an existing automobile production facility located in Fremont, California from New United Motor Manufacturing, Inc. (NUMMI). NUMMI has previously identified environmental conditions at the Fremont site which affect soil and groundwater, and until recently, were undertaking efforts to address these conditions. These conditions are now being addressed by us and NUMMI. Although we have been advised by NUMMI that it has documented and managed the environmental issues, we have not yet performed an in-depth environmental assessment on this facility, and we cannot determine the potential costs to remediate any pre-existing contamination with any certainty at this time. Based on management's best estimate, we estimated the fair value of the environmental liabilities that we assumed to be \$5.3 million. The fair value of these liabilities was determined based on an expected value analysis of the related potential costs to investigate, remediate and manage various environmental conditions that were identified as part of NUMMI's facility decommissioning activities as well as our own diligence efforts. As we continue with our planned construction and operating activities, it is reasonably possible that our estimate of environmental liabilities may change materially.

We have reached an agreement with NUMMI under which, over a ten year period, we will pay the first \$15.0 million of any costs of any governmentally-required remediation activities for contamination that existed prior to the completion of the facility and land purchase for any known or unknown environmental conditions, and NUMMI has agreed to pay the next \$15.0 million for such remediation activities. Our agreement provides, in part, that NUMMI will pay up to the first \$15.0 million on our behalf if such expenses are incurred in the first four years of our agreement, subject to our reimbursement of such costs on the fourth anniversary date of the closing.

On the ten-year anniversary of the closing or whenever \$30.0 million has been spent on the remediation activities, whichever comes first, NUMMI's liability to us with respect to remediation activities ceases, and we are responsible for any and all environmental conditions at the Fremont site. At that point in time, we have agreed to indemnify, defend, and hold harmless NUMMI from all liability and we have released NUMMI for any known or unknown claims except for NUMMI's obligations for representations and warranties under the agreement. As of September 30, 2011, we have accrued \$5.3 million related to these environmental liabilities.

From time to time, we are subject to various legal proceedings that arise from the normal course of business activities. In addition, from time to time, third parties may assert intellectual property infringement claims against us in the form of letters and other forms of communication. If an unfavorable ruling were to occur, there exists the possibility of a material adverse impact on our results of operations, prospects, cash flows, financial position and brand.

**11. Subsequent Events**

***Panasonic Supply Agreement***

On October 5, 2011, we entered into a supply agreement with Panasonic for the supply of lithium ion battery cells. Pursuant to the agreement, we will purchase from Panasonic a certain portion of our lithium ion battery cell needs for our batteries at long-term preferential pricing. The agreement generally provides for the purchase of lithium ion battery cells through December 31, 2015 and also contains standard warranty, indemnification and other provisions.

***DOE Loan Facility Draw-Down***

On November 10, 2011, we received additional loans under the DOE Loan Facility for \$20.4 million at interest rates ranging from 1.0% to 1.4%.

## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and the related notes that appear elsewhere in this Form 10-Q. These discussions contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These forward-looking statements include, but are not limited to, statements concerning our strategy, future operations, future financial position, future revenues, projected costs, expectations regarding demand and acceptance for our technologies, growth opportunities and trends in the market in which we operate, prospects plans and objectives of management and the statements made below under the heading "Management Opportunities, Challenges and Risks." The words "anticipates", "believes", "estimates", "expects", "intends", "may", "plans", "projects", "will", "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part II, Item 1A, "Risk Factors" in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statements.*

### **Overview and Quarter Highlights**

We design, develop, manufacture and sell high-performance fully electric vehicles and advanced electric vehicle powertrain components. We own our sales and service network, and market and sell our vehicles directly to consumers via the phone and internet, in-person at our corporate events and through our network of Tesla stores. We were incorporated in Delaware in July 2003, opened our first store in Los Angeles, California in May 2008, and introduced our first vehicle, the Tesla Roadster, in early 2008. In July 2009, we introduced a new Roadster model, the Tesla Roadster 2, and its higher performance option package Roadster Sport, as well as launched the Tesla Roadster in Europe. In July 2010, we introduced the Roadster 2.5, with new styling and an upgraded interior. We are designing our second vehicle, the Model S sedan, for a significantly broader customer base than the Tesla Roadster and plan to manufacture the Model S in higher volumes than our current volumes for the Tesla Roadster.

During the three months ended September 30, 2011, we recognized total revenues of \$57.7 million, an increase of 85% over total revenues of \$31.2 million for the three months ended September 30, 2010. Automotive sales revenue of \$43.2 million increased 85% from the three months ended September 30, 2010, driven by strong customer demand for the Tesla Roadster globally and significantly higher powertrain component sales.

During the three months ended September 30, 2011, we continued our efforts in expanding our company-owned retail network with the opening of a new store in Eindhoven. We plan to open several more stores by year end in the United States utilizing the new store concept embodied by our Santana Row and Park Meadows Tesla stores. We believe this new store concept provides a unique retail experience designed to engage and inform potential customers about electric vehicles in general, learn about Tesla's innovations and configure their cars through hands-on interactive screens. Some of these new stores will replace existing stores which we plan to continue using as service locations. As a result of our continued activities to support the sales of the Tesla Roadster, the opening and operation of new stores, higher store-related and marketing activities, as well as the growth of the business, we incurred higher selling, general and administrative expenses of \$27.6 million for the three months ended September 30, 2011 when compared to expenses of \$20.4 million for the three months ended September 30, 2010.

---

## [Table of Contents](#)

Development services revenue increased to \$14.4 million for the three months ended September 30, 2011 from \$7.9 million during the three months ended September 30, 2010, due primarily to our development activities for the Toyota Motor Corporation (Toyota) RAV4 EV program. We completed planned milestones and deliveries of samples to Toyota during the quarter, and we currently expect to complete our remaining development services milestones and sample deliveries by early 2012.

The Model S program remains on track for planned first customer deliveries no later than July 2012. During the three months ended September 30, 2011, we continued to make progress on the build of the beta phase of our Model S prototypes. Detailed testing of systems integration, performance and safety, all of which are ongoing, has allowed us to further refine the overall design of the Model S and its constituent parts as well as the production and assembly processes to manufacture the vehicle. In October 2011, we finalized a long term supply contract with Panasonic Corporation for cells to be used in our products, which gives us increased visibility into our variable costs.

Research and development expenses included expenses related to Model S beta prototype build, development of the Tesla Factory, significant engineering, design and testing work being undertaken at several of our suppliers to support Model S readiness, design and engineering activities related to Model X prototyping, and other research and development activities. Research and development expenses were \$54.1 million for the three months ended September 30, 2011, compared to \$26.7 million for the three months ended September 30, 2010. We anticipate that the level of research and development spending will increase slightly from the current level for the remainder of 2011 as we continue with the engineering and testing of Model S, prepare the Tesla Factory for production of the Model S next year, and accelerate the advanced engineering work on Model X.

In addition to Model S engineering, we also experienced significant activity at the Tesla Factory, where we intend to produce our Model S and future vehicles, including our Model X crossover. Significant construction continues to take place and detailed manufacturing readiness plans are being executed. Most of our Model S vehicle manufacturing equipment has been installed at the Tesla Factory, especially in the stamping, plastics, paint, body and final assembly shops. As a result of investments being made in the Tesla Factory and related supplier tooling for the Model S, capital expenditures increased to \$68.8 million for the three months ended September 30, 2011, compared to \$66.5 million for the three months ended September 30, 2010 which was comprised primarily of payments we had made towards the purchase of the Tesla Factory from New United Motor Manufacturing, Inc. (NUMMI). We will continue to seek opportunities to limit our capital expenditures and anticipate our aggregate capital expenditures for 2011 to be in the range of \$220 million and \$245 million, primarily focused on vehicle development and manufacturing activities for Model S and Model X.

Our Model S, Model X and powertrain development activities, as well as our capital investments in manufacturing infrastructure, continued to be supported by draw-downs under our Department of Energy Loan Facility (DOE Loan Facility) and other sources of cash including cash from the sales of the Tesla Roadster, cash from the provision of development services and sales of powertrain components, cash received from refundable reservation payments for our Model S and cash received from our public offerings and private placements. During the three months ended September 30, 2011, we received \$90.8 million in draw-downs under the DOE Loan Facility bringing our total long-term debt under the facility to \$225.0 million. As we continue to progress on our Model S and powertrain activities, we expect to continue making draw-downs under the DOE Loan Facility.

---

## [Table of Contents](#)

As of September 30, 2011, we had \$573.7 million in principal sources of liquidity available from our cash and cash equivalents, short-term marketable securities, cash held in our dedicated DOE account and the remaining amounts available under the DOE Loan Facility. This includes our cash and cash equivalents in the amount of \$213.3 million which includes investments in money market funds, short-term marketable securities of \$65.1 million, cash of \$55.3 million deposited in a dedicated DOE account in accordance with the requirements of our DOE Loan Facility, and \$240.0 million available under the DOE Loan Facility.

### **Management Opportunities, Challenges and Risks**

Our principal focus continues to be on the disciplined development of the Model S so that we can achieve our plan of first customer deliveries no later than July 2012. We are also focused on the continued sales of the Tesla Roadster and powertrain components, development services activities with our strategic partners, advanced engineering work on the planned Model X and pursuing new electric powertrain opportunities with automobile manufacturers.

In June 2011, we entered into an amendment to our supply agreement with Lotus Cars Limited (Lotus) to increase our purchase from 2,400 Tesla Roadster vehicles or gliders to 2,500 vehicles or gliders. Through September 30, 2011, we have delivered over 2,000 vehicles to customers. We currently intend to manufacture at Lotus our current generation Tesla Roadster through January 2012. We plan to sell the last of the North American Roadsters by early next year and continue selling in Europe and Asia until inventory is fully depleted in 2012.

Powertrain component sales in 2011 have increased when compared with 2010. While we anticipate entering into a new development services program with Daimler AG (Daimler), all our powertrain component sales under current agreements with Daimler will be completed by the end of 2011. We expect to resume sales of powertrain components in 2012 with the start of production of the Toyota RAV4 EV program. In July 2011, we entered into a supply and services agreement with Toyota for the production of a validated electric powertrain system, including a battery, charging system, inverter, motor, gearbox and associated software, which will be integrated into the Toyota RAV4 EV. Additionally, we will provide Toyota with certain services related to the supply of these components. Pursuant to the agreement, Toyota will pay us approximately \$100 million from 2012 through 2014 based on our delivery of these components for the RAV4 EV. We plan to begin shipping RAV4 EV production powertrain systems to Toyota consistent with Toyota's announced plan to produce the RAV4 EV for sale in 2012.

As we have a limited number of the Tesla Roadsters left for sale and as we expect powertrain component sales to decline until the start of production for the Toyota RAV4 EV program, we anticipate our automotive sales will decline, potentially significantly, just prior to the planned launch of our Model S. The launch of our Model S could be delayed for a number of reasons and any such delays may be significant and would extend the period in which we would generate limited revenues from sales of our electric vehicles.

Remaining development services revenue for 2011 will be derived primarily from our electric powertrain development activities with Toyota under the Toyota RAV4 EV program. We expect that the Toyota RAV4 EV development program, and the associated development services revenue, will be completed by early 2012. We recently received a letter of intent from Daimler for a full powertrain program for a vehicle in the Mercedes line and anticipate negotiating a development services agreement with Daimler to implement such a program in the upcoming months. Due to timing differences that may arise between the recognition of future milestone revenue and the underlying costs of development services, the gross margin from our development services activities may vary from period to period.

---

## [Table of Contents](#)

The build of the Model S beta prototypes in the Tesla Factory is continuing to progress and we are working closely with suppliers to design, develop and test components that will meet our anticipated production design specifications and schedule. Ensuring that our design, engineering, operations and manufacturing engineering teams, and our suppliers, execute on all significant activities will be critical to a timely launch of first customer deliveries of our Model S no later than July 2012. Our continuing negotiations with suppliers, and our manufacturing capabilities will influence our ability to achieve the cost per unit that we are currently projecting. Our plan to begin first deliveries of the Model S no later than July 2012 is also dependent upon the timely availability of funds from the DOE Loan Facility, upon our finalizing the related design, engineering, component procurement, testing, build out and manufacturing plans in a timely manner and upon our ability to execute these plans within the current timeline.

Earlier in 2011, we publicly announced the Tesla Model X as the first vehicle derivative we intend to develop by leveraging the Model S platform. We are designing the Model X as a crossover vehicle. We currently plan to hold a limited showing of the prototype of the Model X crossover by the end of 2011 and to reveal it publicly early in 2012 followed by the anticipated commercial introduction of this vehicle in the fourth quarter of 2013.

Our operating expenses in 2011 have been significant as we continue to execute on the Model S program and systematically and strategically expand our sales and service infrastructure globally to support the launch of the Model S. As we continue to make significant investments in research and development and our infrastructure to launch the Model S as well as incur costs for the development of the Model X, we expect to continue generating a net loss until we reach volume sales of the Model S. As pre-production development and prototyping costs cannot be capitalized, we expect our operating expenses to continue increasing due to our ongoing activities to prepare the Tesla Factory for production, refine the Model S and continue the advanced engineering work on Model X. Once we start recognizing revenue from the sales of Model S, our Model S production costs, including direct parts, material and labor costs, manufacturing overhead and amortized tooling, and logistics, will begin to be reflected in cost of automotive sales.

Capital spending for the Model S program is anticipated to be at its highest level over the next few quarters, as we make final payments for much of the tooling and manufacturing equipment required for production. We anticipate that most of the capital expenditures on the Model S will be funded by the DOE Loan Facility. We will continue to seek opportunities to limit our capital expenditures and anticipate our aggregate capital expenditures for 2011 to be in the range of \$220 million and \$245 million, primarily focused on vehicle development and manufacturing activities for Model S and Model X. We have also elected to invest incrementally in new technologies and additional plant automation to efficiently produce vehicles at high quality and at an affordable cost. Depreciation of our capital expenditures related to the Fremont facility will begin with the start of Model S production.

See Part II — Item 1A — “Risk Factors” for a further discussion of risks associated with our business, including additional risks related to the Model S and Model X.

### **Critical Accounting Policies and Estimates**

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

---

## [Table of Contents](#)

For a description of our critical accounting policies and estimates, please refer to the “Critical Accounting Policies and Estimates” section of our Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2010, as filed with the Securities and Exchange Commission (SEC). In addition, please refer to Note 2, “Summary of Significant Accounting Policies,” of our condensed consolidated financial statements in Item 1, Part I of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

For revenue arrangements that were entered into or materially modified after January 1, 2011, implementation of new revenue accounting guidance had no material impact on our reported revenue for the three and nine months ended September 30, 2011 as compared to revenue that would have been reported if the related arrangements were subject to the accounting requirements in effect in the prior year.

During the three months ended September 30, 2011, we purchased marketable securities including commercial paper and corporate debt of \$65.1 million. All marketable securities are designated as available-for-sale and reported at estimated fair value, with unrealized gains and losses recorded in accumulated other comprehensive loss which is included in stockholders’ equity. Realized gains and losses on the sale of available-for-sale marketable securities are recorded in other income (expense), net. The cost of available-for-sale marketable securities sold is based on the specific identification method. Interest, dividends, amortization and accretion of purchase premiums and discounts on our marketable securities are included in other income (expense), net. Available-for-sale marketable securities with maturities greater than three months at the date of purchase and remaining maturities of one year or less are classified as short-term marketable securities. Where temporary declines in fair value exist, we have the ability and the intent to hold these securities for a period of time sufficient to allow for any anticipated recovery in fair value.

We regularly review all of our marketable securities for other-than-temporary declines in fair value. The review includes but is not limited to (i) the consideration of the cause of the impairment, (ii) the creditworthiness of the security issuers, (iii) the length of time a security is in an unrealized loss position, and (iv) our ability to hold the security for a period of time sufficient to allow for any anticipated recovery in fair value.

[Table of Contents](#)

**Results of Operations**

The following table sets forth our condensed consolidated statements of operations data for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>Revenues</b>				
Automotive sales	\$ 43,235	\$ 23,350	\$ 115,891	\$ 67,906
Development services	14,431	7,891	48,976	12,552
Total revenues	57,666	31,241	164,867	80,458
<b>Cost of revenues</b>				
Automotive sales	32,752	19,457	90,241	56,581
Development services	7,690	2,488	20,866	4,467
Total cost of revenues	40,442	21,945	111,107	61,048
Gross profit	17,224	9,296	53,760	19,410
<b>Operating expenses</b>				
Research and development	54,083	26,698	147,776	55,379
Selling, general and administrative	27,618	20,432	76,545	59,224
Total operating expenses	81,701	47,130	224,321	114,603
Loss from operations	(64,477)	(37,834)	(170,561)	(95,193)
Interest income	80	100	166	195
Interest expense	—	(298)	—	(992)
Other income (expense), net	(594)	3,180	(2,150)	(6,770)
Loss before income taxes	(64,991)	(34,852)	(172,545)	(102,760)
Provision for income taxes	87	83	377	210
Net loss	<u>\$(65,078)</u>	<u>\$(34,935)</u>	<u>\$(172,921)</u>	<u>\$(102,970)</u>

**Revenues**

*Automotive Sales*

Automotive sales, which include vehicle, options and related sales, and powertrain component and related sales, consisted of the following for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
Vehicle, options and related sales	\$28,403	\$18,221	\$ 76,443	\$55,452
Powertrain component and related sales	14,832	5,129	39,448	12,454
Total automotive sales	<u>\$43,235</u>	<u>\$23,350</u>	<u>\$115,891</u>	<u>\$67,906</u>

Automotive sales during the three and nine months ended September 30, 2011 were \$43.2 million and \$115.9 million, respectively, an increase from \$23.4 million and \$67.9 million during the three and nine months ended September 30, 2010, respectively. Vehicle, options and related sales represent sales of the Tesla Roadster, including vehicle options, accessories and destination charges, vehicle service and sales of zero emission vehicle credits. Powertrain component and related sales represent the sales of electric vehicle powertrain components, such as battery packs and battery chargers, to other manufacturers.

Vehicle, options and related sales during the three and nine months ended September 30, 2011 were \$28.4 million and \$76.4 million, respectively, an increase from \$18.2 million and \$55.4 million for the three and nine months ended September 30, 2010, respectively. The increase in vehicle, options and related sales was primarily attributable to an increase in the number of Tesla Roadsters that we sold, particularly in North America and Asia, coupled with slightly higher average selling prices. Under our supply agreement with Lotus, we will build 2,500 Roadster gliders, the last of which we should receive early next year. We plan to sell the last of the North American Roadsters by early next year and continue selling in Europe and Asia until inventory is fully depleted in 2012. Powertrain component and related sales for the three and nine months ended September 30, 2011 were \$14.8 million and \$39.4 million, respectively, an increase from \$5.1 million and \$12.5 million for the three and nine months ended September 30, 2010, respectively. The increase in powertrain component and related sales was primarily due to significant shipments of battery packs and chargers to Daimler. We began delivering battery packs and chargers for the Daimler Smart fortwo EV program during the first quarter of 2010, and for the Daimler A-Class EV program late in the fourth quarter of 2010. Production for both the Smart fortwo and A-Class EV programs is expected to continue through the end of 2011.

---

## [Table of Contents](#)

### *Development Services*

Development services represent arrangements where we develop electric vehicle powertrain components for other automobile manufacturers, including the design and development of battery packs and chargers to meet customer's specifications.

Development services revenue during the three and nine months ended September 30, 2011 was \$14.4 million and \$49.0 million, respectively, an increase from \$7.9 million and \$12.6 million during the three and nine months ended September 30, 2010, respectively.

In July 2010, we entered into an agreement with Toyota to initiate development of an electric powertrain for the Toyota RAV4 EV. Under this Phase 0 development agreement, prototypes would be made by us by combining the Toyota RAV4 model with a Tesla electric powertrain. Through June 30, 2011, we had delivered all remaining prototype vehicles under the Phase 0 agreement and as such, we did not recognize further development services revenue during the three months ended September 30, 2011.

In October 2010, we also entered into a Phase 1 contract services agreement with Toyota for the development of a validated powertrain system, including a battery, power electronics module, motor, gearbox and associated software, which will be integrated into an electric vehicle version of the Toyota RAV4. During the three months ended September 30, 2011, we completed two milestones and delivered several samples under the Phase 1 agreement. Development services revenue under this arrangement with Toyota for the three months ended September 30, 2011 was \$14.4 million. During the nine months ended September 30, 2011, we completed various milestones and delivered several samples under the Phase 1 agreement and delivered all remaining prototype vehicles under the Phase 0 agreement. Development services revenue under these arrangements with Toyota for the nine months ended September 30, 2011 was \$49.0 million. We expect that the Phase 1 agreement, and the associated development services revenues, will be completed by early 2012.

We intend to grow our development services revenue over time by establishing additional commercial arrangements with other automobile manufacturers and by looking for new development opportunities with existing strategic partners.

Additionally, we expect our development services revenue may fluctuate in future periods based on the timing of our delivery of milestones and samples, as well as the timing of meeting revenue recognition criteria.

### ***Cost of Revenues and Gross Profit***

Cost of revenues includes cost of automotive sales and costs related to our development services. Cost of revenues during the three and nine months ended September 30, 2011 was \$40.4 million and \$111.1 million, respectively, an increase from \$21.9 million and \$61.0 million during the three and nine months ended September 30, 2010, respectively. The increase in cost of automotive sales for the three and nine months ended September 30, 2011 was driven primarily by an increase in the number of vehicles that we sold and the increased shipments of battery packs and chargers to Daimler. We began delivering battery packs and chargers for the Daimler Smart fortwo EV program during the first quarter of 2010 and for the Daimler A-Class EV program late in the fourth quarter of 2010. Cost of development services includes engineering support and testing, direct parts, material and labor costs, manufacturing overhead, including amortized tooling costs, shipping and logistic costs and other development expenses that we incur in the performance of our services under development agreements. The increase in cost of development services was driven primarily by our activities for the Toyota RAV4 EV program which began in the second half of 2010.

---

## [Table of Contents](#)

Gross profit for the three and nine months ended September 30, 2011 was \$17.2 million and \$53.8 million, respectively, an increase from \$9.3 million and \$19.4 million for the three and nine months ended September 30, 2010, respectively. The increase for the three months ended September 30, 2011, compared to the three months ended September 30, 2010, was driven primarily by higher sales of the Tesla Roadster coupled with higher average selling prices, as well as gross profit from our development services activities. The increase for the nine months ended September 30, 2011, compared to the nine months ended September 30, 2010, was driven primarily by the gross profit contributed by our development services activities which we expanded in the latter half of 2010 with the Toyota RAV4 EV program, as well as a significant increase in Tesla Roadster sales coupled with slightly higher average selling prices and ongoing cost improvement programs on the Roadster.

We expect our development services gross profit and gross margin may fluctuate in future periods as the timing of revenue recognition may not coincide with the period in which the corresponding cost of revenues is recognized.

### ***Research and Development Expenses***

Research and development expenses consist primarily of personnel costs for our teams in engineering and research, supply chain, quality, manufacturing engineering and manufacturing test organizations, prototyping expense, contract and professional services and amortized equipment expense. Also included in research and development expenses are development services costs that we incur, if any, prior to the finalization of agreements with our development services customers as reaching a final agreement and revenue recognition is not assured. Development services costs incurred after the finalization of an agreement are recorded in cost of revenues.

Research and development expenses during the three months ended September 30, 2011 were \$54.1 million, an increase from \$26.7 million during the three months ended September 30, 2010. The \$27.4 million increase in research and development expenses during the three months ended September 30, 2011 consisted primarily of a \$10.0 million increase in materials and prototyping expenses primarily to support our Model S alpha and beta builds as well as powertrain development activities, an \$8.7 million increase in employee compensation expenses from higher headcount, a \$4.3 million increase in costs related to Model S engineering, design and testing activities incurred by our suppliers, a \$2.4 million increase in stock-based compensation expense related to a larger number of outstanding equity awards and generally an increasing common stock valuation applied to new grants, and a \$2.1 million increase in office, information technology and facilities-related costs to support the growth of our business.

Research and development expenses during the nine months ended September 30, 2011 were \$147.8 million, an increase from \$55.4 million during the nine months ended September 30, 2010. The \$92.4 million increase in research and development expenses during the nine months ended September 30, 2011 consisted primarily of a \$30.6 million increase in costs related to Model S engineering, design and testing activities incurred by our suppliers, a \$29.5 million increase in materials and prototyping expenses primarily to support our Model S alpha and beta builds as well as powertrain development activities, a \$23.4 million increase in employee compensation expenses from higher headcount, a \$7.2 million increase in stock-based compensation expense related to a larger number of outstanding equity awards and generally a higher common stock valuation applied to new grants, and a \$5.9 million increase in office, information technology and facilities-related costs to support the growth of our business.

---

## [Table of Contents](#)

We have significantly increased our research and development efforts for the Model S in recent quarters, which has resulted in an increase in our research and development expenses. We anticipate that our research and development expenses will rise moderately from our current level in the fourth quarter of 2011 as we incur additional costs to further develop the Model S, to develop the Model X and to operate our Model S manufacturing facility in Fremont, California prior to the start of Model S production.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses consist primarily of personnel and facilities costs related to our Tesla stores, marketing, sales, executive, finance, human resources, information technology and legal organizations, as well as litigation settlements and fees for professional and contract services.

Selling, general and administrative expenses during the three months ended September 30, 2011 were \$27.6 million, an increase from \$20.4 million during the three months ended September 30, 2010. The \$7.2 million increase in our selling, general and administrative expenses during the three months ended September 30, 2011 consisted primarily of a \$3.0 million increase in employee compensation expenses related to higher sales and marketing headcount to support sales activities worldwide and higher general and administrative headcount to support the expansion of the business, a \$1.6 million increase in stock-based compensation expense related to a larger number of outstanding equity awards and generally an increasing common stock valuation applied to new grants, a \$1.3 million increase in office, information technology and facilities-related costs to support the growth of our business, a \$0.7 million increase in professional and outside services costs, and a \$0.4 million increase in costs principally related to our planned Tesla store and gallery openings.

Selling, general and administrative expenses during the nine months ended September 30, 2011 were \$76.5 million, an increase from \$59.2 million during the nine months ended September 30, 2010. The \$17.3 million increase in our selling, general and administrative expenses during the nine months ended September 30, 2011 consisted primarily of a \$9.4 million increase in employee compensation expenses related to higher sales and marketing headcount to support sales activities worldwide and higher general and administrative headcount to support the expansion of the business, a \$4.2 million increase in office, information technology and facilities-related costs to support the growth of our business, a \$2.1 million increase in professional and outside services costs, a \$1.3 million increase in costs principally related to the operation of new Tesla stores openings and a \$0.3 million increase in stock-based compensation expense related to a larger number of outstanding equity awards and generally an increasing common stock valuation applied to new grants.

We expect selling, general and administrative expenses to increase in future periods as we continue to grow and expand our operations, and increase our sales and marketing activities to handle our expanding market presence and prepare for the planned Model S launch scheduled for no later than July 2012. We also expect an increase in our selling, general and administrative expenses as a result of our planned increase in the number of Tesla stores. We plan to open additional stores during 2011, mostly in the United States, and some of these stores will replace existing stores, which we may continue to use as service locations.

### ***Interest Expense***

Our interest expense is primarily due to our loans under the DOE Loan Facility which we began accessing in 2010. Although interest expense will increase as we continue to draw down on the DOE Loan Facility to fund our Model S and powertrain activities, we expect to capitalize this interest to construction in progress until the start of Model S production. During the three and nine months ended September 30, 2011, we capitalized \$1.1 million and \$2.8 million, respectively, of interest expense to construction in progress.

---

[Table of Contents](#)

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

Other income (expense), net consists primarily of the change in the fair value of our warrant liabilities and gains and losses on our foreign currency-denominated assets and liabilities. We expect our foreign exchange gains and losses will vary depending upon movements in the underlying exchange rates. Income or charges resulting from the change in the fair value of our stock warrant liability, excluding the DOE warrant liability, was eliminated after July 2, 2010, as these warrants were net exercised at the completion of our IPO. The DOE convertible preferred stock warrant became a common stock warrant on July 2, 2010 and is carried at its estimated fair value with changes in its fair value continuing to be reflected in other income (expense), net, until its expiration or vesting.

Other expense, net, during the three months ended September 30, 2011 was \$0.6 million, an increase in expense compared to other income, net of \$3.2 million during the three months ended September 30, 2010. Other expense, net, during the nine months ended September 30, 2011 was \$2.2 million, a decrease in expense compared to other expense, net, of \$6.8 million during the nine months ended September 30, 2010. The increase in expense for the three months ended September 30, 2011 was primarily due to a more significant fair value change in our warrant liabilities during the three months ended September 30, 2010 resulting from a lower stock price. The decrease in expense for the nine months ended September 30, 2011 was primarily due to the elimination of warrant liabilities, excluding the DOE warrant liability, upon the completion of our IPO in July 2010.

***Provision for Income Taxes***

Our provision for income taxes during the three and nine months ended September 30, 2011 was \$0.1 million and \$0.4 million, respectively, compared to \$0.1 million and \$0.2 million during the three and nine months ended September 30, 2010, respectively. The increase for the three and nine months ended September 30, 2011 was due primarily to the increase in taxable income in our international jurisdictions.

***Liquidity and Capital Resources***

Since inception and through the three and nine months ended September 30, 2011, we had accumulated net losses of \$587.9 million and have used approximately \$418 million of cash in operations. As of September 30, 2011, we had approximately \$574 million in principal sources of liquidity available from our cash and cash equivalents, short-term marketable securities, cash held in our dedicated DOE account and the remaining amounts available under the DOE Loan Facility. This includes our cash and cash equivalents in the amount of \$213.3 million which included investments in money market funds, our short-term marketable securities in the amount of \$65.1 million, cash of \$55.3 million deposited in a dedicated DOE account in accordance with the requirements of our DOE Loan Facility, and approximately \$240.0 million available under the DOE Loan Facility, which is primarily intended to cover spending related to the development of the Model S and our powertrain activities. Other sources of cash also include cash from the sales of the Tesla Roadster, cash from the provision of development services, sales of powertrain components and refundable reservation payments for our Model S.

## [Table of Contents](#)

We expect that our current sources of liquidity, including cash, cash equivalents, short-term marketable securities, cash held in our dedicated DOE account and the remaining amounts available under the DOE Loan Facility, together with our anticipated cash from operating activities will be sufficient to develop the Model S and Model X based on our current plans. This capital will fund our ongoing operations, continue research and development projects, establish sales and service centers, improve infrastructure such as expanded battery assembly facilities, and to make the investments in tooling and manufacturing capital required to introduce the Model S and to continue development of the Model X. The acceleration of the development of future vehicles, investments in new technologies, increased in-sourcing of manufacturing capabilities, investments to expand our powertrain activities or further expand our sales and service network, may require us to raise additional funds through the issuance of equity, equity-related or debt securities or through obtaining credit. We may also choose to opportunistically raise additional funds if market conditions are favorable. We cannot be certain that additional funds will be available to us on favorable terms when required, or at all.

### **DOE Loan Facility**

On January 20, 2010, we entered into a loan facility with the Federal Financing Bank (FFB), and the Department of Energy (DOE), pursuant to the Advanced Technology Vehicles Manufacturing (ATVM) Incentive Program (the DOE Loan Facility). Under the DOE Loan Facility, the FFB has made available to us two multi-draw term loan facilities in an aggregate principal amount of up to \$465.0 million, which will be available to finance up to 80% of the costs eligible for funding for the powertrain engineering and the build out of a facility to design and manufacture lithium-ion battery packs, electric motors and electric components and the development of, and to build out the manufacturing facility for, our Model S sedan (the Model S Facility). Under the DOE Loan Facility, we are responsible for the remaining 20% of the costs eligible for funding under the ATVM Program for the projects as well as any cost overruns for each project. Loans may be requested under the facilities until January 22, 2013, and we have committed to complete the projects being financed prior to such date. All outstanding amounts under the Loan Facility will be due and payable in September 2019 and September 2022.

The following table summarizes our DOE Loan Facility draw-down activities (in thousands):

	Loan Facility Available for Future Draw-downs	Interest rates
Beginning Balance, January, 2010	\$ 465,048	
Draw-downs received during the three months ended March 31, 2010	(29,920)	2.9% - 3.4%
Draw-downs received during the three months ended June 30, 2010	(15,499)	2.5% - 3.4%
Draw-downs received during the three months ended September 30, 2010	(11,138)	1.7% - 2.6%
Draw-downs received during the three months ended December 31, 2010	(15,271)	1.7% - 2.8%
Remaining Balance, December 31, 2010	393,220	
Draw-downs received during the three months ended March 31, 2011	(30,656)	2.1% - 3.0%
Draw-downs received during the three months ended June 30, 2011	(31,693)	1.8% - 2.7%
Draw-downs received during the three months ended September 30, 2011	(90,822)	1.0% - 1.4%
Remaining Balance, September 30, 2011	\$ 240,049	

The DOE Loan Facility contains customary operational and financial covenants with which we must comply, and impose restrictions on, among other things, additional indebtedness, liens, various fundamental changes to our business (including mergers and acquisitions), payments, expenditures, investments, transactions with affiliates, and other aspects regarding the management of our finances. We are currently in compliance with these covenants. All obligations under the DOE Loan Facility are secured by substantially all of our property.

---

## [Table of Contents](#)

In addition to our obligation to fund a portion of the project costs as described above, we agreed to, and upon completion of our IPO, set aside \$100.0 million to fund a separate dedicated account under our DOE Loan Facility. Depending on the timing and magnitude of our draw-downs and the funding requirements of the dedicated account, the balance of the dedicated account will fluctuate throughout the period in which we plan to make draw-downs under the DOE Loan Facility. Upon completion of our final advance under the DOE Loan Facility, the balance in the dedicated account will be fully transferred out of the dedicated account. As of September 30, 2011 and December 31, 2010, \$55.3 million and \$73.6 million were held in the dedicated account, respectively. As we expect to transfer the current balance out of the dedicated account within one year, we have classified such cash as current restricted cash on the condensed consolidated balance sheets. Pursuant to our DOE Loan Facility, we were not required to hold any portion of the net proceeds from our follow-on public offering and the concurrent private placements completed in June 2011 in the dedicated account.

### ***Leasing Activities***

In February 2010, we began offering a leasing program to qualified customers in the United States for the Tesla Roadster. Through our wholly owned subsidiary, Tesla Motors Leasing, Inc., qualifying customers are permitted to lease the Tesla Roadster for 36 months, after which time they have the option of either returning the vehicle to us or purchasing it for a pre-determined residual value.

When compared to our sales of vehicles, our leasing activities will spread the cash inflows that we would otherwise receive upon the sale of a vehicle, over the lease term and final disposition of the leased vehicle. As such, our cash and working capital requirements will be directly impacted and if leasing volume increases significantly, the impact may be material. However, after taking into consideration our current and planned sources of operating cash, our ability to monitor and prospectively adjust our leasing activity, as well as our intent to collect nonrefundable deposits for leased vehicles that are manufactured to specification, we do not believe that our planned leasing operations will materially adversely impact our ability to meet our commitments and obligations as they become due. As we will also be exposed to credit risk related to the timely collection of lease payments from our customers, we intend to utilize our credit approval and ongoing review processes in order to minimize any credit losses that could occur and which could adversely affect our financial condition and results of operations. We intend to require deposits from customers electing a lease option for vehicles built to a customer's specifications on the same timeframe and under the same circumstances as from customers purchasing our vehicles outright. During the three and nine months ended September 30, 2011, approximately 5% and 7%, respectively, of the vehicles delivered during these periods were under operating leases. As of September 30, 2011, we had deferred revenues of \$1.4 million of down payments which will be recognized over the term of the individual leases. Through September 30, 2011, our leasing activity has not had a significant adverse impact on our liquidity.

### ***Reservations Payments***

A source of our cash flows from operations has been through our receipt of reservation payments from our customers. Reservation payments consist of reservation payments that allow potential customers to hold a reservation for the future purchase of a Tesla Roadster or Model S. We are not currently accepting reservation payments for our Model X crossover vehicle. For our Tesla Roadsters manufactured to specification, our current purchase agreement requires the payment of an initial nonrefundable deposit which varies based on the country of purchase. For the Model S, we require an initial refundable reservation payment of at least \$5,000. For Tesla Roadsters purchased directly from our showrooms, no deposit is required. Prior to the second quarter of 2010, our reservation policy was to accept reservation payments from all customers who wished to purchase a Tesla Roadster and require full payment of the purchase price of the vehicle at the time the customer selected their vehicle specifications. During the second quarter of 2010, we changed our policy to require nonrefundable deposits for Tesla Roadsters manufactured to specification at the time a customer enters into a purchase agreement. However, we also occasionally accept reservation payments for the Tesla Roadster if a customer is interested in purchasing a vehicle but not yet prepared to select the vehicle specifications. For customers who have placed a reservation payment with us, the reservation payment becomes a nonrefundable deposit once the customer has selected the vehicle specifications and enters into a purchase agreement. The full payment of the purchase price of the vehicle is required only upon delivery of the vehicle to the customer. Reservation payments for a vehicle are recorded as a current liability when received. No later than upon the delivery of a vehicle, the reservation payments collected on a customer's account are applied against the total purchase price of the vehicle. Reservation payments are expected to fluctuate as the number of reservation holders on the Tesla Roadster reservation list decreases, while the number of reservation holders on the Model S reservation list increases.

---

[Table of Contents](#)*Summary of Cash Flows*

	Nine Months Ended	
	September 30,	
	2011	2010
	(in thousands)	
Net cash used in operating activities	\$ (87,276)	\$ (93,533)
Net cash used in investing activities	(191,181)	(171,747)
Net cash provided by financing activities	392,227	292,216

*Cash Flows used in Operating Activities*

We continue to experience negative cash flows from operations as we expand our business and build our infrastructure both in the United States and internationally. Our cash flows from operating activities are significantly affected by our cash investments to support the growth of our business in areas such as research and development and selling, general and administrative. Our operating cash flows are also affected by our working capital needs to support growth and fluctuations in inventory, personnel related expenditures, accounts payable and other current assets and liabilities.

Net cash used in operating activities was \$87.3 million during the nine months ended September 30, 2011. The largest component of our cash used during this period related to our net loss of \$172.9 million, which included non-cash charges of \$20.7 million related to stock-based compensation expense, \$12.1 million related to depreciation and amortization and \$2.1 million related to the fair value change in our warrant liability. Significant operating cash outflows were primarily related to \$224.3 million of operating expenses, \$111.1 million of cost of revenues and a \$10.8 million increase in inventory and operating lease vehicles, partially offset by a \$38.0 million increase in accounts payable and accrued liabilities. Inventory increased to meet our production requirements for the Tesla Roadster and powertrain component sales as well as leasing activities while the net increase in accounts payable and accrued liabilities was due to both the growth of our business and the timing of vendor payments. Significant operating cash inflows for the nine months ended September 30, 2011 were comprised primarily of automotive sales of \$115.9 million, \$49.0 million of development services revenue and a \$34.5 million net increase in reservation payments, partially offset by an \$11.5 million increase in accounts receivable and a \$1.6 million increase in deferred revenue. The increase in accounts receivable was related primarily to receivables from Toyota for the achievement of two milestones in September 2011 under the Toyota RAV4 EV Phase 1 contract services agreement and shipments of batteries and chargers to Daimler under the Daimler Smart fortwo and A-Class EV programs.

---

## [Table of Contents](#)

Net cash used in operating activities was \$93.5 million during the nine months ended September 30, 2010. The largest component of our cash used during this period related to our net loss of \$103.0 million, which included non-cash charges of \$13.3 million related to stock-based compensation expense, \$7.7 million related to depreciation and amortization and \$5.6 million related to the fair value change in our warrant liabilities. Significant operating cash outflows were primarily related to \$114.6 million of operating expenses, \$61.0 million of cost of revenues, a \$22.8 million increase in inventory and operating lease vehicles, a \$3.1 million increase in prepaid expenses and other current assets, partially offset by an \$5.9 million increase in accounts payable and accrued liabilities. Inventory and operating lease vehicles increased to meet our production requirements for the Tesla Roadster and powertrain component sales as well as the introduction of our leasing program in 2010 while the net increase in accounts payable and accrued liabilities was due to both the growth of our business as well as our increased manufacturing activities. Significant operating cash inflows for the nine months ended September 30, 2010 were comprised primarily of automotive sales of \$67.9 million, \$12.6 million of development services revenue, a \$3.4 million increase in deferred revenues, partially offset by a \$4.6 million increase in accounts receivable. In the first quarter of 2010, Daimler engaged us to assist with the development and production of a battery pack and charger for a pilot fleet of its A-Class electric vehicles to be introduced in Europe during 2011, and in May 2010, we executed a final agreement under which Daimler would make additional payments to us for the successful completion of certain development milestones and the delivery of prototype samples. The increase in deferred revenues was primarily driven by payments that we had received from Daimler in relation to this development arrangement for which revenue recognition has yet to be achieved. Deferred revenues also increased from our vehicle leasing activities as we are recognizing the lease down-payments over the term of the operating leases. The increase in accounts receivable was related primarily to powertrain component sales and development services during the nine months ended September 30, 2010 in relation to Daimler's Smart fortwo and A-Class EV programs. During the nine months ended September 30, 2010, we received \$7.6 million of net reservation payments for the Model S.

### ***Cash Flows used in Investing Activities***

Cash flows from investing activities primarily relate to capital expenditures to support our growth in operations, including investments in Model S manufacturing, as well as restricted cash that we must maintain in relation to our DOE Loan Facility, facility lease agreements, equipment financing, and certain vendor credit policies.

Net cash used in investing activities was \$191.2 million during the nine months ended September 30, 2011 primarily related to \$143.6 million in purchases of capital equipment and \$65.0 million in purchases of short-term marketable securities, partially offset by an \$18.3 million of net transfers out of our dedicated DOE account in accordance with the provisions of the DOE Loan. The increase in capital purchases was primarily due to significant development and construction activities at the Tesla Factory as well as purchases of manufacturing equipment.

Net cash used in investing activities was \$171.7 million during the nine months ended September 30, 2010 primarily related to capital purchases of \$81.8 million and an increase in restricted cash of \$90.0 million. The increase in capital purchases was driven primarily by nonrefundable payments of \$8.0 million and a further \$52.1 million of escrow payments made in relation to our purchase of an existing automobile production facility located in Fremont, California from NUMMI, and certain manufacturing assets located thereon to be used for our planned Model S manufacturing, as well as expenditures related to our transition to and build out of our powertrain manufacturing facility and corporate headquarters in Palo Alto, California, and purchases of manufacturing equipment. Our purchase transactions with NUMMI were completed in October 2010. The increase in restricted cash was primarily related to \$100.0 million of net proceeds from our IPO and concurrent private placement that we transferred to a dedicated account as required by our DOE Loan Facility, partially offset by \$11.9 million that was transferred out of the dedicated account during the three months ended September 30, 2010 in accordance with the provisions of the DOE Loan Facility. To a lesser extent, the increase in restricted cash was also related to certain refundable reservation payments segregated in accordance with state consumer protection regulations in Washington State.

---

[Table of Contents](#)

***Cash Flows from Financing Activities***

Net cash provided by financing activities was \$392.2 million during the nine months ended September 30, 2011 and was comprised primarily of \$231.5 million received from our follow-on public offering and concurrent private placements completed in June 2011, \$153.2 million received from our draw-downs under the DOE Loan Facility and \$7.8 million received from the exercise of common stock options by employees and the purchase of common stock under our employee stock purchase plan.

Net cash provided by financing activities was \$292.2 million during the nine months ended September 30, 2010 comprised primarily of \$188.8 million in proceeds from our IPO, \$50.0 million in proceeds from the Toyota private placement, \$56.6 million we received from our loans under the DOE Loan Facility, partially offset by \$3.7 million of issuance costs we incurred in relation to our DOE Loan Facility and our IPO.

**Off-Balance Sheet Arrangements**

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

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

***Foreign Currency Risk***

A portion of our revenues, costs and expenses for the three and nine months ended September 30, 2011 and 2010 were denominated in foreign currencies. This is primarily due to the contract with Lotus Cars Limited in the United Kingdom to manufacture the Tesla Roadster vehicles and gliders, and other parts sourced in Europe. In addition, our international sales and marketing operations incur expenses denominated in foreign currencies, principally in the British pound, the euro and the Japanese yen. This cost exposure is partially offset by our sales growth in these regions since payments for vehicles sold in these regions are denominated in the local currency. This provides a partial natural hedge to our cost exposure in Europe and Asia depending on our sales levels in these regions. Our battery cell purchases as well as asset purchases for the Tesla Factory from Asian suppliers are also subject to currency risk. Although our present contracts are United States dollar based, if the United States dollar depreciates significantly against the local currency, it could cause our Asian suppliers to significantly raise their prices, which could harm our financial results. To date, the foreign currency effect on our cash and cash equivalents has not been significant.

***Interest Rate Risk***

We had cash and cash equivalents and short-term marketable securities totaling \$278.4 million as of September 30, 2011. A portion of our cash and cash equivalents were invested in money market funds. Our cash and cash equivalents and short-term marketable securities are held for working capital purposes. We do not enter into investments for trading or speculative purposes. We believe that we do not have any material exposure to changes in the fair value as a result of changes in interest rates due to the short term nature of our cash equivalents and marketable securities. Declines in interest rates, however, would reduce future investment income.

---

[Table of Contents](#)

As of September 30, 2011, we have received loans under the DOE Loan Facility for an aggregate of \$225.0 million with interest rates ranging from 1.0 % to 3.4%. As we continue to borrow under our DOE Loan Facility, interest rates will be determined by the Secretary of the Treasury as of the date of each loan, based on the Treasury yield curve and the scheduled principal installments for such loan. We also have capital lease obligations of \$1.0 million as of September 30, 2011 which are fixed rate instruments and are not subject to fluctuations in interest rates.

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2011. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures as of September 30, 2011, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting identified in management’s evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

From time to time, we are subject to various legal proceedings that arise from the normal course of business activities. In addition, from time to time, third parties may assert intellectual property infringement claims against us in the form of letters and other forms of communication. If an unfavorable ruling were to occur, there exists the possibility of a material adverse impact on our results of operations, prospects, cash flows, financial position and brand.

**ITEM 1A. RISK FACTORS**

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

**Risks Related to Our Business and Industry**

***Our limited operating history makes evaluating our business and future prospects difficult, and may increase the risk of your investment.***

You must consider the risks and difficulties we face as an early stage company with limited operating history. If we do not successfully address these risks, our business, prospects, operating results and financial condition will be materially and adversely harmed. We were formed in July 2003. We began delivering our first performance electric vehicle, the Tesla Roadster, in early 2008, and as of September 30, 2011, we had only sold approximately 2,000 production vehicles to customers, almost all of which were sold in the United States and Europe. Our revenues for the three months ended September 30, 2011 and 2010 were \$57.7 million and \$31.2 million, respectively, and for the nine months ended September 30, 2011 and 2010 were \$164.9 million and \$80.5 million, respectively. We have a very limited operating history on which investors can base an evaluation of our business, operating results and prospects.

To date, we have derived our revenues principally from sales of the Tesla Roadster and from electric powertrain development services and sales. We intend in the longer term to derive substantial revenues from the sales of our Model S sedan and future electric vehicles, including our Model X crossover. The Model S is in development and we may not start delivering to customers until July 2012. We have no operating history with respect to the Model S electric vehicle and have not yet fully completed the component procurement process for the Model S, which limits our ability to accurately forecast the cost of the vehicle. Further, we have not yet produced a prototype of the Model X crossover and do not expect this vehicle to be available for sale before the fourth quarter of 2013 at the earliest. We only completed the purchase of our manufacturing facility in Fremont, California in October 2010 to produce such vehicles, and we have not yet completely finalized the full vehicle design or our engineering, manufacturing or component supply plans for the Model S. In addition, our powertrain component sales, development services revenue and powertrain research and development compensation have been almost entirely generated under arrangements with Daimler AG (Daimler) and Toyota Motor Corporation (Toyota). While we recently received a letter of intent from Daimler for a full powertrain program for a vehicle in the Mercedes line, we have not yet entered into any development services agreement with Daimler for such program and may never do so. Furthermore, while we have executed a supply and services agreement with Toyota related to the Toyota RAV4 EV program, there are no assurances that we will be able to secure future business with Daimler, Toyota or any of their affiliates.

It is difficult to predict our future revenues and appropriately budget for our expenses, and we have limited insight into trends that may emerge and affect our business. For example, during the four quarters of 2009 and 2010, we recorded quarterly revenue of as much as \$45.5 million and as little as \$18.6 million and quarterly operating losses of as much as \$51.6 million and as little as \$4.3 million. In the event that actual results differ from our estimates or we adjust our estimates in future periods, our operating results and financial position could be materially affected.

---

## [Table of Contents](#)

In addition, our revenues to date have included amounts we receive from selling zero emission vehicle (ZEV) credits to other automobile manufacturers, pursuant to certain state regulations. While we continue to sign agreements with automakers to sell ZEV and other regulatory credits, we may not be able to enter into new agreements to sell any additional credits related to the Model S or our other future vehicles, which would negatively impact our revenues and margin targets in the long term.

***We are significantly dependent upon revenue generated from the sale of our electric vehicles, specifically the Tesla Roadster, in the near term, and our future success will be dependent upon our ability to design and achieve market acceptance of new vehicle models, and specifically the Model S.***

We currently generate a significant percentage of our revenue from the sale of our Tesla Roadsters. We will end the production run of the Tesla Roadster at 2,500 vehicles in January 2012 and beyond that date, our sales of new Tesla Roadsters will be limited to any vehicles available from our remaining inventory.

Our second planned vehicle, our Model S, is not expected to be in production until mid-2012, requires significant investment prior to commercial introduction, and may never be successfully developed or commercially successful. There can be no assurance that we will be able to design future models of performance electric vehicles that will meet the expectations of our customers or that our future models, including the Model S, will become commercially viable. To the extent that we are not able to build the production Model S to the expectations created by the early prototypes and our anticipated specifications, customers may cancel their reservations, our future sales could be harmed and investors may lose confidence in us. Additionally, historically, automobile customers have come to expect new and improved vehicle models to be introduced frequently. In order to meet these expectations, we may in the future be required to introduce on a regular basis new vehicle models as well as enhanced versions of existing vehicle models. As technologies change in the future for automobiles in general and performance electric vehicles specifically, we will be expected to upgrade or adapt our vehicles and introduce new models in order to continue to provide vehicles with the latest technology. To date, we have limited experience simultaneously designing, testing, manufacturing and selling our electric vehicles.

***We anticipate that we will experience a significant increase in losses and will experience a significant decrease in revenues prior to the launch of the Model S.***

Prior to the launch of our Model S, we anticipate our revenues will decline significantly. We currently produce the Tesla Roadster gliders, which are partially assembled vehicles that do not contain our electric powertrain, with Lotus Cars Limited (Lotus) in Hethel, England. We currently intend to manufacture gliders with Lotus for our current generation Tesla Roadster until January 2012. We intend to use these gliders in the manufacturing of the Tesla Roadster to both fulfill orders placed in 2011 as well as new orders placed in 2012 until our supply of gliders is exhausted. As a result, we anticipate that we will generate limited revenue from selling electric vehicles in 2012 until the launch of our Model S. The launch of our Model S could be delayed for a number of reasons and any such delays may be significant and would extend the period in which we would generate limited revenues from sales of our electric vehicles. Furthermore, although we recently received a letter of intent from Daimler for a full powertrain program for a vehicle in the Mercedes line we do not have any agreement with Daimler for sales or services beyond 2011. In addition to the limited number of the Tesla Roadsters left for sale, we also expect powertrain component sales to decline until the start of production for the Toyota RAV4 EV program. The potential decrease in sales revenue prior to the launch of the Model S due to declines in both Roadster and powertrain component sales could materially and adversely affect our business, prospects, operating results and financial condition and our ability to fund operating losses could seriously constrain our growth.

---

[Table of Contents](#)

***Our production model for the non-powertrain portion of the Model S is unproven, still evolving and is very different from the non-powertrain portion of the production model for the Tesla Roadster.***

Our future business depends in large part on our ability to execute on our plans to develop, manufacture, market and sell our Model S electric vehicle. To date, our revenues have been principally derived from the sales of our Tesla Roadster. The Tesla Roadster has only been produced in low volume quantities and the body is assembled by Lotus in the United Kingdom, with the final assembly by us at our facility in Menlo Park, California for sales destined in the United States. We plan to manufacture the Model S in higher volumes than our present production capabilities in our manufacturing facility in Fremont, California. As a result, the non-powertrain portion of the production model for the Model S will be substantially different and significantly more complex than the non-powertrain portion of the production model for the Tesla Roadster. In addition, we plan to introduce a number of new manufacturing technologies and techniques, such as aluminum spot welding systems for the Model S, which have not been widely adopted in the automotive industry. Our Model S production model will require significant investments of cash and management resources and we may experience unexpected delays or difficulties that could postpone our ability to launch or achieve full manufacturing capacity for the Model S, which could have a material adverse effect on our business, prospects, operating results and financial condition.

Our production model for the Model S is based on many key assumptions, which may turn out to be incorrect, including:

- that we will be able to complete changes to the late stage design of Model S in a timely manner that meets our targeted production date and allows for high quality manufacturing;
- that we will be able to engage suppliers for all the necessary components on terms and conditions acceptable to us and that we will be able to obtain all components on a timely basis and in the necessary quantities and at acceptable prices;
- that we will not experience any significant delays or disruptions in our supply chain;
- that our internal crash testing and computer aided design process can accurately predict the performance of our vehicle for passing relevant safety standards and that we will be able to meet our safety goals without changing materials or designs in a way that would impact our anticipated start of production;
- that we will be able to secure the funding necessary to build out and equip our manufacturing facility in Fremont, California (the Tesla Factory) in a timely manner, including meeting milestones and other conditions necessary to draw down funds under our loan facility with the United States Department of Energy (DOE);
- that we will be able to develop and equip the Tesla Factory exceeding our projected costs and on our projected timeline;

---

## [Table of Contents](#)

- that the equipment which we have purchased or which we select will be able to accurately manufacture the vehicle within specified design tolerances;
- that we will be able to comply with environmental, workplace safety and similar regulations to operate our planned manufacturing facilities and our business on our projected timeline;
- that we will be able to attract, recruit, hire and train skilled employees, including employees on the production line, to operate the Tesla Factory; and
- that we will be able to maintain high quality controls as we transition to a higher level of in-house manufacturing process.

If one or more of the foregoing assumptions turns out to be incorrect, our ability to successfully launch the Model S on time and on budget if at all, and our business prospects, operating results and financial condition may be materially and adversely impacted.

***We have no experience to date in high volume manufacturing of our electric vehicles.***

We do not know whether we will be able to develop efficient, automated, low-cost manufacturing capability and processes, and reliable sources of component supply that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes required to successfully mass market the Model S. Even if we are successful in developing our high volume manufacturing capability and processes and reliable sources of component supply, we do not know whether we will be able to do so in a manner that avoids significant delays and cost overruns, including as a result of factors beyond our control such as problems with suppliers and vendors, or in time to meet our vehicle commercialization schedules or to satisfy the requirements of customers. We have, and may in the future, experience cost increases from certain of our suppliers in order to meet our quality targets and development timelines. Any failure to develop such manufacturing processes and capabilities within our projected costs and timelines could have a material adverse effect on our business, prospects, operating results and financial condition.

***We may experience significant delays in the design, manufacture, launch and financing of the Model S, including in the build out of our Model S manufacturing facility, which could harm our business and prospects.***

Any delay in the financing, design, manufacture and launch of the Model S, including in the build out of the Tesla Factory could materially damage our brand, business, prospects, financial condition and operating results. Automobile manufacturers often experience delays in the design, manufacture and commercial release of new vehicle models. We experienced significant delays in launching the Tesla Roadster. We initially announced that we would begin delivering the Tesla Roadster in June 2007, but due to various design and production delays, we did not physically deliver our first Tesla Roadster until February 2008, and we only achieved higher production of this vehicle in the fourth quarter of 2008. These delays resulted in additional costs and adverse publicity for our business.

---

## [Table of Contents](#)

We may experience similar delays in launching the Model S, and any such delays could be significant. In addition, final designs for the Model S and plans for the build out of the manufacturing facility are still in process, and various aspects of the Model S component procurement and manufacturing plans have not yet been determined. We continue to make adjustments to the design of the Model S to create the highest quality electric vehicle in the world. If we do not complete these late stage changes to the design of Model S however, and do not execute on the Model S manufacturing plans in a timely manner, we may be unable to meet our plan to deliver first customer vehicles no later than July 2012, our costs may rise and/or the Model S that we do produce may be lower in quality. Additionally, detailed testing of systems integration, performance and safety are ongoing and any negative results from such testing could cause production delays in the Model S, cost increases or lower quality Model S vehicles.

In addition, we are currently evaluating, qualifying and selecting certain remaining suppliers for the planned production of the Model S. However, we may not be able to engage suppliers for the remaining components in a timely manner, at an acceptable price or in the necessary quantities. Furthermore, even if we are able to engage needed suppliers, such suppliers may not be ready or able to supply us with needed Model S components in a timely manner or may be unable to provide us with the necessary level of quality components that we require.

In addition, we will also need to do extensive testing to ensure that the Model S is in compliance with applicable National Highway Traffic Safety Administration (NHTSA) safety regulations and United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) emission regulations prior to beginning mass production and delivery of the vehicles. Our plan to begin production of the Model S in mid-2012 is dependent upon the timely availability of funds from our DOE Loan Facility, upon our finalizing the related design, engineering, component procurement, testing, build out and manufacturing plans in a timely manner, and upon our ability to execute these plans within the current timeline.

We completed the purchase of our manufacturing facility in Fremont, California in October 2010 and selected it in part because it was recently used for automobile manufacturing, was located within 20 miles of our Palo Alto engineering facility, and we believe its size may allow us to adapt our internal manufacturing plans quickly. We expect that all these factors will support the timely start of production for the Model S. However, because we have only recently acquired this facility and have just begun to implement our manufacturing plans, including the purchasing and installment of needed tooling, we may experience unexpected delays in completing the build out of this facility for the production of our Model S.

In January 2010, we entered into a loan facility with the Federal Financing Bank (FFB) that is guaranteed by the DOE (DOE Loan Facility). Our DOE Loan Facility provides for a \$465.0 million loan facility under the DOE's Advanced Technology Vehicles Manufacturing Loan Program (ATVM Program) to help finance the continued development of the Model S, including the planned build out and operation of a manufacturing facility, and to finance the planned build out and operation of our electric powertrain manufacturing facility. We intend to fund the build out of the planned manufacturing facility principally by using existing cash and cash obtained through the DOE Loan Facility. Our ability to draw down these funds under the DOE Loan Facility is conditioned upon several draw conditions. These draw conditions include our achievement of progress milestones relating to the design and development of the Model S and the Model S manufacturing facility as well as financial covenants. If we are unable to draw down the anticipated funds under the DOE Loan Facility on the timeline that we anticipate, our plans for building our Model S and electric powertrain manufacturing plants could be significantly delayed which would materially adversely affect our business, prospects, financial condition and operating results.

---

## [Table of Contents](#)

***We face significant barriers in our attempt to produce our Model S, and if we cannot successfully overcome those barriers our business will be negatively impacted.***

We face significant barriers as we attempt to produce our first mass produced vehicle, our Model S. We currently have drivable prototypes of the Model S, but do not have a final full production intent prototype, a final design, a built-out manufacturing facility or manufacturing processes. The automobile industry has traditionally been characterized by significant barriers to entry, including large capital requirements, investment costs of designing and manufacturing vehicles, long lead times to bring vehicles to market from the concept and design stage, the need for specialized design and development expertise, regulatory requirements and establishing a brand name and image and the need to establish sales and service locations. As a manufacturer and seller of only electric vehicles, we face a variety of added challenges to entry that a traditional automobile manufacturer would not encounter including additional costs of developing and producing an electric powertrain that has comparable performance to a traditional gasoline engine in terms of range and power, inexperience with servicing electric vehicles, regulations associated with the transport of lithium-ion batteries and unproven high-volume customer demand for fully electric vehicles. In addition, while we are designing the Model S to have the capability to rapidly swap out its battery pack, there are no specialized facilities today to perform such swapping. While we may offer this service in the future, no assurance can be provided that we will do so, or that any other third party will offer such services. Also, while we expect to be able to achieve a 300 mile range, our ability to do so will depend on the feasibility and availability of appropriate battery cell technologies and improvements that we are able to achieve in reducing energy consumption. We must successfully overcome these barriers as we move from producing the low volume Tesla Roadster to the Model S which we plan to produce at much higher volumes. If we are not able to overcome these barriers, our business, prospects, operating results and financial condition will be negatively impacted and our ability to grow our business will be harmed.

***We have a history of losses and we expect significant increases in our costs and expenses to result in continuing losses for at least the foreseeable future.***

We incurred a net loss of \$65.1 million and \$172.9 million for the three and nine months ended September 30, 2011, respectively. In addition, we have accumulated net losses of \$587.9 million from our inception through September 30, 2011. We have had net losses in each quarter since our inception. We believe that we will continue to incur operating and net losses each quarter until at least the time we begin significant deliveries of the Model S, which is not expected to be in production until mid-2012 with higher volume production not occurring until 2013, and may occur later. Even if we are able to successfully develop the Model S, there can be no assurance that it will be commercially successful. If we are to ever achieve profitability it will be dependent upon the successful development and successful commercial introduction and acceptance of automobiles such as the Model S, which may not occur.

We expect the rate at which we will incur losses to increase significantly in future periods from current levels as we:

- conclude Roadster sales;
- complete the development services contract for the Toyota RAV4 EV program;
- experience a drop in powertrain component sales until we commence powertrain component sales for the Toyota RAV4 EV in 2012;

---

## [Table of Contents](#)

- design, develop and manufacture our Model S and our planned Model X crossover;
- design, develop and manufacture components of our electric powertrain;
- develop and equip the Tesla Factory to produce our Model S;
- build up inventories of parts and components for our Model S;
- develop and equip manufacturing facilities to produce our electric powertrain components;
- open new Tesla stores;
- expand our design, development, maintenance and repair capabilities;
- increase our sales and marketing activities; and
- increase our general and administrative functions to support our growing operations.

Because we will incur the costs and expenses from these efforts before we receive any incremental revenues with respect thereto, our losses in future periods will be significantly greater than the losses we would incur if we developed our business more slowly. In addition, we may find that these efforts are more expensive than we currently anticipate or that these efforts may not result in increases in our revenues, which would further increase our losses.

In addition, as of September 30, 2011, we had recorded a full valuation allowance on our United States net deferred tax assets as at this point we believe it is more likely than not that we will not achieve profitability and accordingly be able to use our deferred tax assets in the foreseeable future. Federal and state laws impose substantial restrictions on the utilization of net operating loss and tax credit carry-forwards in the event of an “ownership change,” as defined in Section 382 of the Internal Revenue Code. Although we do not believe that either our IPO or subsequent follow-on offering or private placements constituted an ownership change resulting in limitations on our ability to use our net operating loss and tax credit carry-forwards, we have not yet performed a study to determine whether such limitations exist. If an ownership change is deemed to have occurred as a result of our IPO, subsequent follow-on offering, or private placements, utilization of these assets could be significantly reduced.

***If we are unable to adequately control the costs associated with operating our business, including our costs of manufacturing, sales and materials, our business, financial condition, operating results and prospects will suffer.***

If we are unable to maintain a sufficiently low level of costs for designing, manufacturing, marketing, selling and distributing and servicing our electric vehicles relative to their selling prices, our operating results, gross margins, business and prospects could be materially and adversely impacted. We have made, and will be required to continue to make, significant investments for the design, manufacture and sales of our electric vehicles. When we first began delivering our Tesla Roadster in early 2008, our marginal costs of producing the Tesla Roadster exceeded our revenue from selling those vehicles. Revenue from the sales of our Tesla Roadster as well as from ZEV credits did not exceed cost of revenues related to our Tesla Roadster until the second quarter of 2009. There can be no assurances that our costs of producing and delivering the Model S will be less than the revenue we generate from sales at the time of the Model S launch or that we will achieve our expected gross margin on sales of the Model S.

---

## [Table of Contents](#)

We incur significant costs related to procuring the raw materials required to manufacture our high-performance electric cars, assembling vehicles and compensating our personnel. We will also incur substantial costs in constructing and building out our Model S and powertrain manufacturing facilities, each of which could potentially face cost overruns or delays in construction. Additionally, in the future we may be required to incur substantial marketing costs and expenses to promote our vehicles, including through the use of traditional media such as television, radio and print, even though our marketing expenses to date have been relatively limited. If we are unable to keep our operating costs aligned with the level of revenues we generate, our operating results, business and prospects will be harmed. Many of the factors that impact our operating costs are beyond our control. For example, the costs of our raw materials and components, such as lithium-ion battery cells or carbon fiber and aluminum body panels used in our vehicles, could increase due to shortages as global demand for these products increases. Indeed, if the popularity of electric vehicles exceeds current expectations without significant expansion in battery cell production capacity and advancements in battery cell technology, shortages could occur which would result in increased materials costs to us.

***We are dependent on our suppliers, a significant number of which are single or limited source suppliers, and the inability of these suppliers to continue to deliver, or their refusal to deliver, necessary components of our vehicles in a timely manner at prices, quality levels, and volumes acceptable to us would have a material adverse effect on our business, prospects and operating results.***

The Tesla Roadster and our Model S each contain numerous purchased parts which we source globally from over 150 suppliers, many of whom are currently single source suppliers for these components. While we obtain components from multiple sources whenever possible, similar to other automobile manufacturers, many of the components used in our vehicles are purchased by us from a single source. We refer to these component suppliers as our single source suppliers. To date we have not qualified alternative sources for most of the single sourced components used in our vehicles and we generally do not maintain long-term agreements with our single source suppliers.

While we believe that we may be able to establish alternate supply relationships and can obtain or engineer replacement components for our single source components, we may be unable to do so in the short term or at all at prices or costs that are favorable to us. In particular, while we believe that we will be able to secure alternate sources of supply for almost all of our single sourced components on a relatively short time frame, qualifying alternate suppliers or developing our own replacements for certain highly customized components of our vehicles may be time consuming and costly.

In addition, Lotus is the only manufacturer for certain components, such as the chassis of our Tesla Roadster. We therefore refer to it as a sole source supplier. Replacing the components from Lotus that are sole sourced may require us to reengineer our vehicles, which would be time consuming and costly.

This supply chain exposes us to multiple potential sources of delivery failure or component shortages for the Tesla Roadster and Model S, as well as for our powertrain component sales activities. For example, earthquakes similar to the one that occurred in Japan in March 2011 could negatively impact our supply chain. We are currently evaluating, qualifying and selecting our suppliers for the planned production of the Model S and we intend to establish dual suppliers and multiple manufacturing locations for some suppliers for several key components of the Model S, although we expect that most components for the Model S will be single sourced. We have in the past experienced source disruptions in our supply chains, which have caused delays in our production process and we may experience additional delays in the future with respect to the Tesla Roadster, the Model S and any other future vehicle we may produce.

---

## [Table of Contents](#)

Changes in business conditions, wars, governmental changes and other factors beyond our control or which we do not presently anticipate, could also affect our suppliers' ability to deliver components to us on a timely basis. Furthermore, if we experience significant increased demand, or need to replace our existing suppliers, there can be no assurance that additional supplies of component parts will be available when required on terms that are favorable to us, at all, or that any supplier would allocate sufficient supplies to us in order to meet our requirements or fill our orders in a timely manner. In the past, we have replaced certain suppliers because of their failure to provide components that met our quality control standards. The loss of any single or limited source supplier or the disruption in the supply of components from these suppliers could lead to delays in vehicle deliveries to our customers, which could hurt our relationships with our customers and also materially adversely affect our business, prospects and operating results.

Changes in our supply chain have resulted in the past, and may result in the future, in increased cost and delay. For example, a change in our supplier for our carbon fiber body panels contributed to the delay in our ability to ramp our production of the Tesla Roadster. A failure by our suppliers to provide the components in a timely manner or at the level of quality necessary to manufacture our performance electric vehicles such as our Model S could prevent us from fulfilling customer orders in a timely fashion which could result in negative publicity, damage our brand and have a material adverse effect on our business, prospects, financial condition and operating results. In addition, since we have no fixed pricing arrangements with any of our component suppliers other than Lotus, our component suppliers could increase their prices with little or no notice to us, which could harm our financial condition and operating results if we are unable to pass such price increases along to our customers.

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

We may experience increases in the cost or a sustained interruption in the supply or shortage of raw materials. Any such increase or supply interruption could materially negatively impact our business, prospects, financial condition and operating results. We use various raw materials in our business including aluminum, steel, nickel, carbon fiber, non-ferrous metals such as copper, as well as cobalt. The prices for these raw materials fluctuate depending on market conditions and global demand for these materials and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to price fluctuations for lithium-ion cells. These risks include:

- the inability or unwillingness of current battery manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric or plug-in hybrid vehicle industry as demand for such cells increases;
- disruption in the supply of cells due to quality issues or recalls by battery cell manufacturers;
- an increase in the cost of raw materials, such as nickel and cobalt used in lithium-ion cells, or aluminum used in the body of the Model S; and
- fluctuations in the value of the Japanese yen against the U.S. dollar.

---

## [Table of Contents](#)

Our business is dependent on the continued supply of battery cells for our vehicles and for the battery pack we produce for other automobile manufacturers. While we believe several sources of the battery are available for the Tesla Roadster and Model S, we have fully qualified only one supplier for the cells used in each of the Tesla Roadster and Model S. The same is also true for the battery cells used for battery packs that we supply to other OEMs. Any disruption in the supply of battery cells from such vendor could temporarily disrupt production of the Tesla Roadster and of the battery packs we produce for other automobile manufacturers until such time as a different supplier is fully qualified. Furthermore, fluctuations or shortages in petroleum and other economic conditions may cause us to experience significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials or prices charged to us, such as those charged by our battery cell manufacturers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased electric vehicle prices. There can be no assurance that we will be able to recoup increasing costs of raw materials by increasing vehicle prices. We have also already announced an estimated price for the base model of our Model S but have not announced the final pricing of the other variants of the Model S. Any attempts to increase the announced or expected prices in response to increased raw material costs could be viewed negatively by our customers, result in cancellations of Model S reservations and could materially adversely affect our brand, image, business, prospects and operating results.

### ***Our future growth is dependent upon consumers' willingness to adopt electric vehicles.***

Our growth is highly dependent upon the adoption by consumers of, and we are subject to an elevated risk of any reduced demand for, alternative fuel vehicles in general and electric vehicles in particular. If the market for electric vehicles does not develop as we expect or develops more slowly than we expect, our business, prospects, financial condition and operating results will be harmed. The market for alternative fuel vehicles is relatively new, rapidly evolving, characterized by rapidly changing technologies, price competition, additional competitors, evolving government regulation and industry standards, frequent new vehicle announcements and changing consumer demands and behaviors.

Other factors that may influence the adoption of alternative fuel vehicles, and specifically electric vehicles, include:

- perceptions about electric vehicle quality, safety (in particular with respect to lithium-ion battery packs), design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of electric vehicles;
- perceptions about vehicle safety in general, in particular safety issues that may be attributed to the use of advanced technology, including vehicle electronics and regenerative braking systems;
- the limited range over which electric vehicles may be driven on a single battery charge;
- the decline of an electric vehicle's range resulting from deterioration over time in the battery's ability to hold a charge;
- concerns about electric grid capacity and reliability, which could derail our past and present efforts to promote electric vehicles as a practical solution to vehicles which require gasoline;
- the availability of alternative fuel vehicles, including plug-in hybrid electric vehicles;
- improvements in the fuel economy of the internal combustion engine;
- the availability of service for electric vehicles;

---

## Table of Contents

- consumers' desire and ability to purchase a luxury automobile or one that is perceived as exclusive;
- the environmental consciousness of consumers;
- volatility in the cost of oil and gasoline;
- consumers' perceptions of the dependency of the United States on oil from unstable or hostile countries;
- government regulations and economic incentives promoting fuel efficiency and alternate forms of energy;
- access to charging stations, standardization of electric vehicle charging systems and consumers' perceptions about convenience and cost to charge an electric vehicle;
- the availability of tax and other governmental incentives to purchase and operate electric vehicles or future regulation requiring increased use of nonpolluting vehicles;
- perceptions about and the actual cost of alternative fuel; and
- macroeconomic factors.

In addition, recent reports have suggested the potential for extreme temperatures to affect the range or performance of electric vehicles. Based on internal testing, we estimate that our Tesla Roadster would have a 5-10% reduction in range when operated in -20°C temperatures. To the extent customers have concerns about such reductions or third party reports which suggest reductions in range greater than our estimates gain widespread acceptance, our ability to market and sell our vehicles, particularly in colder climates, may be adversely impacted.

Additionally, we will become subject to regulations that require us to alter the design of our vehicles, which could negatively impact consumer interest in our vehicles. For example, our electric vehicles make less noise than internal combustion vehicles. Due to concerns about overly quiet vehicles and vision impaired pedestrians, in January 2011, Congress passed and the President signed the Pedestrian Safety Enhancement Act of 2010. The new law requires NHTSA to establish minimum sounds for electric vehicles and hybrid electric vehicles when travelling at low speeds. New standards must be proposed by mid-2012 for implementation within three years of the Act's enactment date of January 3, 2011.

The influence of any of the factors described above may cause current or potential customers not to purchase our electric vehicles, which would materially adversely affect our business, operating results, financial condition and prospects.

***Our success could be harmed by negative publicity regarding our company or products.***

From time to time, our vehicles are evaluated by third parties. For example, the show Top Gear which airs on the British Broadcasting Corporation did a review of the Tesla Roadster in 2008. Top Gear is one of the most watched automotive shows in the world with an estimated 350 million viewers worldwide and is broadcast in over 100 countries. Since originally airing in the fall of 2008, the episode about the Tesla Roadster has been rebroadcast repeatedly around the world. The review of the Tesla Roadster included a number of significant falsehoods regarding the car's performance, range and safety. Such criticisms create a negative public perception about the Tesla Roadster, and to the extent that these comments are believed by the public, may cause current or potential customers not to purchase our electric vehicles, which would materially adversely affect our business, operating results, financial condition and prospects.

---

[Table of Contents](#)

***The range of our electric vehicles on a single charge declines over time which may negatively influence potential customers' decisions whether to purchase our vehicles.***

The range of our electric vehicles on a single charge declines principally as a function of usage, time and charging patterns as well as other factors. For example, a customer's use of their Tesla vehicle as well as the frequency with which they charge the battery of their Tesla vehicle can result in additional deterioration of the battery's ability to hold a charge. We currently expect that our battery pack for the Tesla Roadster will retain approximately 60-65% of its ability to hold its initial charge after approximately 100,000 miles or seven years, which will result in a decrease to the vehicle's initial range. Such battery deterioration and the related decrease in range may negatively influence potential customer decisions whether to purchase our vehicles, which may harm our ability to market and sell our vehicles.

***We are dependent upon our ability to fully draw down on our loan facility from the United States Department of Energy, which may restrict our ability to conduct our business.***

Our plan for manufacturing the Model S and for developing our electric powertrain facility depends on our ability to fully draw down on our DOE Loan Facility. Our DOE Loan Facility provides for a \$465.0 million loan facility under the DOE's ATVM Program to help finance the continued development of the Model S, including the planned build out and operation of a manufacturing facility, and to finance the build out and operation of our electric powertrain manufacturing facility. We cannot, however, access all of these funds at once, but only through periodic draws through January 2013 as eligible costs are incurred. Through September 30, 2011, we have received loans under our DOE Loan Facility for an aggregate of \$225.0 million. Our ability to draw down these funds under the DOE Loan Facility is conditioned upon specified draw conditions. For the Model S manufacturing facility project, the draw conditions include our achievement of progress milestones relating to the design and development of the Model S and the Model S manufacturing facility. Additionally, the DOE Loan Facility requires us to comply with certain operating and financial covenants and places additional restrictions on our ability to operate our business. If we do not comply with such requirements of the DOE Loan Facility, such failure, if not waived by the DOE, could cause a default. In the event of a default, we would not be eligible to draw funds under the DOE Loan Facility and existing outstanding loan amounts would become due immediately.

Additionally, if we are unable to draw down the anticipated funds under the DOE Loan Facility, or our ability to make such draw downs is delayed, we may need to obtain additional or alternative financing to operate our Model S and electric powertrain manufacturing facilities to the extent our cash on hand is insufficient. Any failure to obtain the remaining DOE funds or secure other alternative funding could materially and adversely affect our business and prospects. Such additional or alternative financing may not be available on attractive terms, if at all, and could be more costly for us to obtain. As a result, our plans for building our Model S and electric powertrain manufacturing plants could be significantly delayed which would materially adversely affect our business, prospects, financial condition and operating results.

Our DOE Loan Facility documents contain customary covenants that include, among others, a requirement that the project be conducted in accordance with the business plan for such project, compliance with all requirements of the ATVM Program, and limitations on our and our subsidiaries' ability to incur indebtedness, incur liens, make investments or loans, enter into mergers or acquisitions, dispose of assets, pay dividends or make distributions on capital stock, prepay indebtedness, pay management, advisory or similar fees to affiliates, enter into certain affiliate transactions, enter into new lines of business and enter into certain restrictive agreements. These restrictions may limit our ability to operate our business and may cause us to take actions or prevent us from taking actions we believe are necessary from a competitive standpoint or that we otherwise believe are necessary to grow our business.

---

## [Table of Contents](#)

In addition, our DOE Loan Facility requires Mr. Musk and certain of his affiliates, until one year after we complete the project relating to the Model S Facility, to own at least 65% of the Tesla capital stock held by them as of the date of the DOE Loan Facility, and a failure to comply would be an event of default that could result in an acceleration of all obligations under the DOE Loan Facility documents and the exercise of other remedies by the DOE.

***The operation of our vehicles is different from internal combustion engine vehicles and our customers may experience difficulty operating them properly, including difficulty transitioning between different methods of braking.***

We have designed our vehicles to minimize inconvenience and inadvertent driver damage to the powertrain. In certain instances, these protections may cause the vehicle to behave in ways that are unfamiliar to drivers of internal combustion vehicles. For example, we employ regenerative braking to recharge the battery in most modes of vehicle operation. Our customers may become accustomed to using this regenerative braking instead of the wheel brakes to slow the vehicle. However, when the vehicle is at maximum charge, the regenerative braking is not needed and is not employed. Accordingly, our customers may have difficulty shifting between different methods of braking. In addition, we use safety mechanisms to limit motor torque when the powertrain system reaches elevated temperatures. In such instances, the vehicle's acceleration and speed will decrease. Finally, if the driver permits the battery to substantially deplete its charge, the vehicle will progressively limit motor torque and speed to preserve the charge that remains. The vehicle will lose speed and ultimately coast to a stop. Despite several warnings about an imminent loss of charge, the ultimate loss of speed may be unexpected. There can be no assurance that our customers will operate the vehicles properly, especially in these situations. Any accidents resulting from such failure to operate our vehicles properly could harm our brand and reputation, result in adverse publicity and product liability claims, and have a material adverse affect on our business, prospects, financial condition and operating results. In addition, if consumers dislike these features, they may choose not to buy additional cars from us which could also harm our business and prospects.

***Developments in alternative technologies or improvements in the internal combustion engine may materially adversely affect the demand for our electric vehicles.***

Significant developments in alternative technologies, such as advanced diesel, ethanol, fuel cells or compressed natural gas, or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. For example, fuel which is abundant and relatively inexpensive in North America, such as compressed natural gas, may emerge as consumers' preferred alternative to petroleum based propulsion. Any failure by us to develop new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay our development and introduction of new and enhanced electric vehicles, which could result in the loss of competitiveness of our vehicles, decreased revenue and a loss of market share to competitors.

---

[Table of Contents](#)

***If we are unable to keep up with advances in electric vehicle technology, we may suffer a decline in our competitive position.***

We may be unable to keep up with changes in electric vehicle technology and, as a result, may suffer a decline in our competitive position. Any failure to keep up with advances in electric vehicle technology would result in a decline in our competitive position which would materially and adversely affect our business, prospects, operating results and financial condition. Our research and development efforts may not be sufficient to adapt to changes in electric vehicle technology. As technologies change, we plan to upgrade or adapt our vehicles and introduce new models in order to continue to provide vehicles with the latest technology, in particular battery cell technology. However, our vehicles may not compete effectively with alternative vehicles if we are not able to source and integrate the latest technology into our vehicles. For example, we do not manufacture battery cells, which makes us dependent upon other suppliers of battery cell technology for our battery packs.

***Our distribution model is different from the predominant current distribution model for automobile manufacturers, which makes evaluating our business, operating results and future prospects difficult.***

Our distribution model is not common in the automobile industry today, particularly in the United States. We plan to continue to sell our performance electric vehicles over the internet and in company-owned Tesla stores. This model of vehicle distribution is relatively new and unproven, especially in the United States, and subjects us to substantial risk as it requires, in the aggregate, a significant expenditure and provides for slower expansion of our distribution and sales systems than may be possible by utilizing a more traditional dealer franchise system. For example, we will not be able to utilize long established sales channels developed through a franchise system to increase our sales volume, which may harm our business, prospects, financial condition and operating results. Moreover, we will be competing with companies with well-established distribution channels.

We have opened Tesla stores in the United States, Europe and Japan, many of which have been open for less than one year. We have only limited experience distributing and selling our performance vehicles through our Tesla stores. Our success will depend in large part on our ability to effectively develop our own sales channels and marketing strategies. Implementing our business model is subject to numerous significant challenges, including obtaining permits and approvals from local and state authorities, and we may not be successful in addressing these challenges. In April 2011, we began the roll out of our new interactive store strategy. The concept and layout of these new stores, which are located in high profile retail centers, is different than what has previously been used in automotive sales. We do not know whether our new store strategy will be successful, if consumers will be willing to purchase vehicles in this manner or if these locations will be deemed to comply with applicable zoning restrictions as well as approval and acceptance from the specific high profile retail centers in which we seek to locate our stores. As a result, we may incur additional costs in order to improve or change our retail strategy.

You must consider our business and prospects in light of the risks, uncertainties and difficulties we encounter as we implement our business model. For instance, we will need to persuade customers, suppliers and regulators of the validity and sustainability of our business model. We cannot be certain that we will be able to do so, or to successfully address the risks, uncertainties and difficulties that our business strategy faces. Any failure to successfully address any of the risks, uncertainties and difficulties related to our business model would have a material adverse effect on our business and prospects.

---

## [Table of Contents](#)

*We may face regulatory limitations on our ability to sell vehicles directly or over the internet which could materially and adversely affect our ability to sell our electric vehicles.*

We sell our vehicles from our Tesla stores as well as over the internet. We may not be able to sell our vehicles through this sales model in each state in the United States as many states have laws that may be interpreted to prohibit internet sales by manufacturers to residents of the state or to impose other limitations on this sales model, including laws that prohibit manufacturers from selling vehicles directly to consumers without the use of an independent dealership or without a physical presence in the state. For example, the state of Kansas provides that a manufacturer cannot deliver a vehicle to a Kansas resident except through a dealer licensed to do business in the state of Kansas, which may be interpreted to require us to open a store in the state of Kansas in order to sell vehicles to Kansas residents. In some states where we have opened a gallery, which is a location where potential customers can view our vehicles but is not a full retail location, it is possible that a state regulator could take the position that activities at our gallery constitute an unlicensed motor vehicle dealership and thereby violates applicable manufacturer-dealer laws. For example, the state of Colorado required us to obtain dealer and manufacturer licenses in the state in order to operate our gallery in Colorado. In addition, some states have requirements that service facilities be available with respect to vehicles sold in the state, which may be interpreted to also require that service facilities be available with respect to vehicles sold over the internet to residents of the state thereby limiting our ability to sell vehicles in states where we do not maintain service facilities.

The foregoing examples of state laws governing the sale of motor vehicles are just some of the regulations we will face as we sell our vehicles. In many states, the application of state motor vehicle laws to our specific sales model is largely untested under state motor vehicle industry laws, particularly with respect to sales over the internet, and would be determined by a fact specific analysis of numerous factors, including whether we have a physical presence or employees in the applicable state, whether we advertise or conduct other activities in the applicable state, how the sale transaction is structured, the volume of sales into the state, and whether the state in question prohibits manufacturers from acting as dealers. As a result of the fact specific and untested nature of these issues, and the fact that applying these laws intended for the traditional automobile distribution model to our sales model allows for some interpretation and discretion by the regulators, the manner in which the applicable authorities will apply their state laws to our distribution model is unknown. Such laws, as well as other laws governing the motor vehicle industry, may subject us to potential inquiries and investigations from state motor vehicle regulators who may question whether our sales model complies with applicable state motor vehicle industry laws and who may require us to change our sales model or may prohibit our ability to sell our vehicles to residents in such states. In addition, decisions by regulators permitting us to sell vehicles may be subject to challenges as to whether such decisions comply with applicable state motor vehicle industry laws. Such challenges, if successful, could prohibit our ability to sell our vehicles to residents in such states.

We are also registered as both a motor vehicle manufacturer and dealer in Canada, Australia, and Japan, and have obtained licenses to sell vehicles in other countries such as Hong Kong and Singapore. Furthermore, while we have performed an analysis of the principal laws in the European Union relating to our distribution model and believe we comply with such laws, we have not performed a complete analysis in all foreign jurisdictions in which we may sell vehicles. Accordingly, there may be laws in jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our vehicle reservation practices or other business practices. Even for those jurisdictions we have analyzed, the laws in this area can be complex, difficult to interpret and may change over time.

---

[Table of Contents](#)

Regulatory limitations on our ability to sell vehicles could materially and adversely affect our ability to sell our electric vehicles.

***Reservations for Model S sedans are fully refundable to customers, and significant cancellations could harm our financial condition, business, prospects and operating results.***

As of September 30, 2011, we had unfilled reservations for approximately 6,500 Model S sedans, all of which are subject to cancellation by the customer up until such time that the customer enters into a purchase agreement. Historically, all of our reservations have been refundable and we have had a significant number of customers who submitted reservations for the Tesla Roadster cancel those reservations and we have refunded their deposits.

Given the long lead times that we have historically experienced between customer reservation and delivery on the Tesla Roadster and that we expect to experience on the Model S, there is a heightened risk that customers that have made reservations may not ultimately take delivery on vehicles due to potential changes in customer preferences, competitive developments and other factors. For example, when we delayed the introduction of the original Tesla Roadster in the fall of 2007, we experienced a significant number of customers that cancelled their reservations and requested the return of their reservation payment. If we encounter delays in the introduction of the Model S, we believe that a significant number of our customers could similarly cancel their reservations. As a result, no assurance can be made that reservations will not be cancelled and will ultimately result in the final purchase, delivery, and sale of the vehicle. Such cancellations could harm our financial condition, business, prospects and operating results.

***If we are unable to design, develop, market and sell new electric vehicles and services that address additional market opportunities, our business, prospects and operating results will suffer.***

We may not be able to successfully develop new electric vehicles and services, address new market segments or develop a significantly broader customer base. To date, we have focused our business on the sale of high-performance electric vehicles and have targeted relatively affluent consumers. We will need to address additional markets and expand our customer demographic in order to further grow our business. In particular, we intend the Model S to appeal to the customers of premium vehicles, which is a much larger and different demographic from that of the Tesla Roadster. Successfully offering a vehicle in this vehicle class requires delivering a vehicle with a higher standard of fit and finish in the interior and exterior than currently exists in the Tesla Roadster, at a price that is competitive with other premium vehicles. We have not completed the design, component sourcing or manufacturing process for the Model S, so it is difficult to forecast its eventual cost, manufacturability or quality. Therefore, there can be no assurance that we will be able to deliver a vehicle that is ultimately competitive in the premium vehicle market. In 2011, we publicly announced the Model X crossover as the first vehicle we intend to develop by leveraging the Model S platform. We have also previously announced our intent to develop a third generation electric vehicle which we expect to produce at our manufacturing facility in Fremont, California after the introduction of the Model S. However, we have not yet finalized the design, engineering or component sourcing plans for these vehicles and there are no assurances that we will be able to bring these vehicles to market at a lower price point and in higher volumes than our Model S as we currently intend, if at all. Our failure to address additional market opportunities would harm our business, prospects, financial condition and operating results.

---

## [Table of Contents](#)

***Any changes to the Federal Trade Commission's electric vehicle range testing procedure and recent changes made by the United States Environmental Protection Agency's energy consumption regulations for electric vehicles could result in a reduction to the advertised range of our vehicles which could negatively impact our sales and harm our business.***

The Federal Trade Commission (FTC) requires us to calculate and display the range of our electric vehicles on a label we affix to the vehicle's window. The FTC specifies that we follow testing requirements set forth by the Society of Automotive Engineers (SAE) which further requires that we test using the EPA's combined city and highway testing cycles. The EPA recently established new requirements for the fuel economy stickers that appear on new cars offered for sale (i.e., the Monroney label). In addition to the new labels and as part of that final rule published on July 6, 2011, EPA has also modified its testing cycles in a manner that, when applied to our vehicles, could reduce the advertised range of our vehicles by up to 30% as compared to the combined two-cycle test currently applicable to our vehicles. While we intend to demonstrate to the EPA that a more appropriate derating factor applies to our vehicles, there is no guarantee that the EPA would approve such a factor. These new requirements apply to all model year 2013 and later vehicles. Following EPA's announcement, the FTC also issued an Advanced Notice of Proposed Rulemaking seeking comment from interested stakeholders as to whether that Federal Agency should adopt procedures similar to EPA's under its labeling requirements. In the meantime, the FTC has also published an Enforcement Policy noticing that the FTC would forebear enforcement against any vehicle manufacturer that utilized labels meeting the new EPA requirements versus the existing FTC requirements. This indicates FTC's inclination to move towards harmonization of their labeling requirements with EPA's new requirements. If the FTC continues in this direction, this could impair our ability to deliver the Model S with the initially advertised range, which could result in the cancellation of reservations that have been placed for the Model S. Any reduction in the advertised range of our vehicles could negatively impact our vehicle sales and harm our business.

***If we are unable to effectively leverage the benefits of using an adaptable common platform architecture in the design and manufacture of our vehicles, our business prospects, operating results and financial condition would be adversely affected.***

We intend to design the Model S with an adaptable platform architecture and common electric powertrain so that we can use the platform of the Model S to create future electric vehicles, including, as examples, a crossover/sport utility vehicle, a van and a cabriolet. In 2011, we publicly announced the Model X crossover as the first vehicle we intend to develop by leveraging the Model S platform. However, we have no experience with using common platforms in the design and manufacture of our vehicles and the design of the Model S is not complete. We may make changes to the design of the Model S that may make it more difficult to use the Model S platform for future electric vehicles. There are no assurances that we will be able to use the Model S platform to bring future vehicle models, including the Model X crossover, to market faster or more inexpensively by leveraging use of this common platform or that there will be sufficient customer demand for the Model X crossover or additional vehicle variants of this platform.

***We may experience significant delays in the design, manufacture and launch of the Model X which could harm our business and prospects.***

We currently intend to introduce our Model X crossover in the fourth quarter of 2013. Any delay in the design, manufacture and launch of the Model X could materially damage our brand, business, prospects, financial condition and operating results. Automobile manufacturers often experience delays in the design, manufacture and commercial release of new vehicle models. We experienced significant delays in launching the Tesla Roadster, which resulted in additional costs and adverse publicity for our business. We may experience similar delays, cost overruns and adverse publicity in launching the Model X, any of which could be significant. We are in the initial design and development stages and currently do not have a drivable early prototype of the Model X or a Model X manufacturing plan. Furthermore, we have not yet begun to evaluate, qualify or select suppliers for the planned production of the Model X and cannot begin to do so until the design of the Model X is finalized. We may not be able to engage suppliers for the components in a timely manner, at an acceptable price or in the necessary quantities. We will also need to do extensive testing to ensure that the Model X is in compliance with applicable NHTSA safety regulations and EPA and CARB emission regulations prior to beginning mass production and delivery of the vehicles. In addition, we have limited resources and, to the extent that such resources are devoted to the manufacture and production of the Model S, we may have difficulty producing and delivering our Model X vehicle in a timely manner. If we are not able to manufacture and deliver our Model X in a timely manner and consistent with our budget and cost projections, our business, prospects, operating results and financial condition will be negatively impacted and our ability to grow our business will be harmed.

---

## [Table of Contents](#)

*The automotive market is highly competitive, and we may not be successful in competing in this industry. We currently face competition from new and established competitors and expect to face competition from others in the future.*

The worldwide automotive market, particularly for alternative fuel vehicles, is highly competitive today and we expect it will become even more so in the future. Other automobile manufacturers entered the electric vehicle market at the end of 2010 and we expect additional competitors to enter this market within the next several years and as they do so we expect that we will experience significant competition. With respect to our Tesla Roadster, we currently face strong competition from established automobile manufacturers, including manufacturers of high-performance vehicles, such as Porsche and Ferrari. In addition, upon the launch of our Model S sedan, we will face competition from existing and future automobile manufacturers in the extremely competitive premium sedan market, including Audi, BMW, Lexus and Mercedes.

Many established and new automobile manufacturers have entered or have announced plans to enter the alternative fuel vehicle market. In Japan, Mitsubishi has been selling its electric iMiEV since April 2010. In December 2010, Nissan introduced in the United States the Nissan Leaf, a fully electric vehicle and Ford has announced that it plans to introduce an electric vehicle in 2011. In addition, several manufacturers, including General Motors, Toyota, Ford, and Honda, are each selling hybrid vehicles, and certain of these manufacturers have announced plug-in versions of their hybrid vehicles. For example, in December 2010, General Motors introduced the Chevrolet Volt, which is a plug-in hybrid vehicle that operates purely on electric power for a limited number of miles, at which time an internal combustion engine engages to recharge the battery.

Moreover, it has been reported that many of the large OEMs such as BMW, Daimler, Lexus, Audi, Renault and Volkswagen are also developing electric vehicles. Several new start-ups have also announced plans to enter the market for performance electric vehicles, although none of these have yet come to market. Finally, electric vehicles have already been brought to market in China and other foreign countries and we expect a number of those manufacturers to enter the United States market as well.

Most of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. Virtually all of our competitors have more extensive customer bases and broader customer and industry relationships than we do. In addition, almost all of these companies have longer operating histories and greater name recognition than we do. Our competitors may be in a stronger position to respond quickly to new technologies and may be able to design, develop, market and sell their products more effectively.

Furthermore, certain large manufacturers offer financing and leasing options on their vehicles and also have the ability to market vehicles at a substantial discount, provided that the vehicles are financed through their affiliated financing company. We only began offering a leasing program in February 2010 which is currently only available to qualified Tesla Roadster customers in the United States and Canada. We do not currently offer, or plan to offer, any form of direct financing on our vehicles. We have not in the past, and do not currently, offer customary discounts on our vehicles. The lack of our direct financing options and the absence of customary vehicle discounts could put us at a competitive disadvantage.

---

## [Table of Contents](#)

We expect competition in our industry to intensify in the future in light of increased demand for alternative fuel vehicles, continuing globalization and consolidation in the worldwide automotive industry. Factors affecting competition include product quality and features, innovation and development time, pricing, reliability, safety, fuel economy, customer service and financing terms. Increased competition may lead to lower vehicle unit sales and increased inventory, which may result in a further downward price pressure and adversely affect our business, financial condition, operating results and prospects. Our ability to successfully compete in our industry will be fundamental to our future success in existing and new markets and our market share. There can be no assurances that we will be able to compete successfully in our markets. If our competitors introduce new cars or services that compete with or surpass the quality, price or performance of our cars or services, we may be unable to satisfy existing customers or attract new customers at the prices and levels that would allow us to generate attractive rates of return on our investment. Increased competition could result in price reductions and revenue shortfalls, loss of customers and loss of market share, which could harm our business, prospects, financial condition and operating results.

***Demand in the automobile industry is highly volatile, which may lead to lower vehicle unit sales and adversely affect our operating results.***

Volatility of demand in the automobile industry may materially and adversely affect our business, prospects, operating results and financial condition. The markets in which we currently compete and plan to compete in the future have been subject to considerable volatility in demand in recent periods. For example, according to automotive industry sources, sales of passenger vehicles in North America during the fourth quarter of 2008 were over 30% lower than those during the same period in the prior year. Demand for automobile sales depends to a large extent on general, economic, political and social conditions in a given market and the introduction of new vehicles and technologies. As a new automobile manufacturer and low volume producer, we have less financial resources than more established automobile manufacturers to withstand changes in the market and disruptions in demand. As our business grows, economic conditions and trends in other countries and regions where we sell our electric vehicles will impact our business, prospects and operating results as well. Demand for our electric vehicles may also be affected by factors directly impacting automobile price or the cost of purchasing and operating automobiles such as sales and financing incentives, prices of raw materials and parts and components, cost of fuel and governmental regulations, including tariffs, import regulation and other taxes. Volatility in demand may lead to lower vehicle unit sales and increased inventory, which may result in further downward price pressure and adversely affect our business, prospects, financial condition and operating results. These effects may have a more pronounced impact on our business given our relatively smaller scale and financial resources as compared to many incumbent automobile manufacturers.

***Difficult economic conditions may negatively affect consumer purchases of luxury items, such as our performance electric vehicles.***

Over the last few years, the deterioration in the global financial markets and continued challenging condition of the macroeconomic environment has negatively impacted consumer spending and we believe has adversely affected the sales of our Tesla Roadster. The automobile industry in particular was severely impacted by the poor economic conditions and several vehicle manufacturing companies, including General Motors and Chrysler, were forced to file for bankruptcy. Sales of new automobiles generally have dropped during this recessionary period. Sales of high-end and luxury consumer products, such as our performance electric vehicles, depend in part on discretionary consumer spending and are even more exposed to adverse changes in general economic conditions. Difficult economic conditions could therefore temporarily reduce the market for vehicles in our price range. Discretionary consumer spending also is affected by other factors, including changes in tax rates and tax credits, interest rates and the availability and terms of consumer credit.

---

## [Table of Contents](#)

If the current difficult economic conditions continue or worsen, we may experience a decline in the demand for our Tesla Roadster or reservations for our Model S or future vehicles such as Model X, any of which could materially harm our business, prospects, financial condition and operating results. Accordingly, any events that have a negative effect on the United States economy or on foreign economies or that negatively affect consumer confidence in the economy, including disruptions in credit and stock markets, and actual or perceived economic slowdowns, may harm our business, prospects, financial condition and operating results.

***Our financial results may vary significantly from period-to-period due to the seasonality of our business and fluctuations in our operating costs.***

Our operating results may vary significantly from period-to-period due to many factors, including seasonal factors that may have an effect on the demand for our electric vehicles. Demand for new cars in the automobile industry in general, and for high-performance sports vehicles such as the Tesla Roadster in particular, typically decline over the winter season, while sales are generally higher as compared to the winter season during the spring and summer months. Sales of the Tesla Roadster have fluctuated on a seasonal basis with increased sales during the spring and summer months in our second and third fiscal quarters relative to our fourth and first fiscal quarters. We note that, in general, automotive sales tend to decline over the winter season and we anticipate that our sales of the Model S, the Model X and other models we introduce may have similar seasonality. However, our limited operating history makes it difficult for us to judge the exact nature or extent of the seasonality of our business. Also, any unusually severe weather conditions in some markets may impact demand for our vehicles. Our operating results could also suffer if we do not achieve revenue consistent with our expectations for this seasonal demand because many of our expenses are based on anticipated levels of annual revenue.

In addition, we expect our period-to-period operating results to vary based on our operating costs which we anticipate will increase significantly in future periods as we, among other things, design, develop and manufacture our Model S, Model X and electric powertrain components, build and equip new manufacturing facilities to produce the Model S and electric powertrain components, open new Tesla stores with maintenance and repair capabilities, incur costs for warranty repairs or product recalls, if any, increase our sales and marketing activities, and increase our general and administrative functions to support our growing operations. As a result of these factors, we believe that quarter-to-quarter comparisons of our operating results, especially in the short-term, are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. Moreover, our operating results may not meet expectations of equity research analysts or investors. If any of this occurs, the trading price of our common stock could fall substantially, either suddenly or over time.

***Marketplace confidence in our long-term business prospects is important for building and maintaining our business.***

If we are unable to establish and maintain confidence about our business prospects among consumers and within our industry, then our financial condition, operating results and business prospects may suffer materially. Our vehicles are highly technical products that require maintenance and support. If we were to cease or cut back operations, even years from now, buyers of our vehicles from years earlier might have much more difficulty in maintaining their vehicles and obtaining satisfactory support. As a result, consumers may be less likely to purchase our vehicles now if they are not convinced that our business will succeed or that our operations will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. For example, during the economic downturn of 2008, we had difficulty raising the necessary funding for our operations, and, as a result, in the fourth quarter of 2008 we had to lay off approximately 60 employees and curtail our expansion plans. In addition, during this period a number of customers canceled their previously placed reservations. If we are required to take similar actions in the future, such actions may result in negative perceptions regarding our long-term business prospects.

---

[Table of Contents](#)

Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers and other parties in our liquidity and long-term business prospects. In contrast to some more established automakers, we believe that, in our case, the task of maintaining such confidence may be particularly complicated by factors such as the following:

- our limited operating history;
- our limited revenues and lack of profitability to date;
- unfamiliarity with or uncertainty about the Tesla Roadster and the Model S;
- uncertainty about the long-term marketplace acceptance of alternative fuel vehicles generally, or electric vehicles specifically;
- the prospect that we will need ongoing infusions of external capital to fund our planned operations;
- the size of our expansion plans in comparison to our existing capital base and scope and history of operations; and
- the prospect or actual emergence of direct, sustained competitive pressure from more established automakers, which may be more likely if our initial efforts are perceived to be commercially successful.

Many of these factors are largely outside our control, and any negative perceptions about our long-term business prospects, even if exaggerated or unfounded, would likely harm our business and make it more difficult to raise additional funds when needed.

---

## [Table of Contents](#)

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

The design, manufacture, sale and servicing of automobiles is a capital intensive business. As of September 30, 2011, we had \$278.4 million in cash and cash equivalents and short-term marketable securities, which excludes the \$55.3 million in restricted cash we have remaining in the dedicated account under the provisions of our DOE Loan Facility. We expect that our current sources of liquidity, including cash and cash equivalents, short-term marketable securities, cash held in our DOE account and the remaining amounts available under the DOE Loan Facility, together with our anticipated cash from operating activities and the proceeds of our recent public offering and the concurrent private placements that we completed in June 2011, will be sufficient to develop the Model S and Model X based on our current plans. However, if there are delays in the launch of the Model S or Model X, if we are unable to draw down the anticipated funds under the DOE Loan Facility for any reason, including our failure to meet operating or financial covenants, or if the costs in building our Model S, Model X and powertrain manufacturing facilities exceed our expectations or if we incur any significant unplanned expenses or embark on new significant strategic investments, we may need to raise additional funds through the issuance of equity, equity-related or debt securities or through obtaining credit from government or financial institutions. This capital will be necessary to fund our ongoing operations, continue research and development projects, including those for our planned Model X crossover, establish sales and service centers, improve infrastructure such as expanded battery assembly facilities, and to make the investments in tooling and manufacturing capital required to introduce the Model S and Model X. In particular, we have not yet begun to accept customer reservation payments on our Model X crossover, can provide no assurance that customers will be willing to make such payments and accordingly may be reliant on other financing sources to fund the development of this vehicle. We cannot be certain that additional funds will be available to us on favorable terms when required, or at all. If we cannot raise additional funds when we need them, our financial condition, results of operations, business and prospects could be materially adversely affected. Additionally, under our DOE Loan Facility, we face restrictions on our ability to incur additional indebtedness, and in the future may need to obtain a waiver from the DOE in order to do so. We may not be able to obtain such waiver from the DOE which may harm our business. Future issuance of equity or equity-related securities will dilute the ownership interest of existing stockholders and our issuance of debt securities could increase the risk or perceived risk of our company.

***If our vehicles fail to perform as expected, our ability to develop, market and sell our electric vehicles could be harmed.***

Our vehicles may contain defects in design and manufacture that may cause them not to perform as expected or that may require repair. For example, our vehicles use a substantial amount of software code to operate. Software products are inherently complex and often contain defects and errors when first introduced. While we have performed extensive internal testing, we currently have a limited frame of reference by which to evaluate the long-term performance of our Tesla Roadster. We have no frame of reference by which to evaluate our Model S upon which our business prospects depend. There can be no assurance that we will be able to detect and fix any defects in the vehicles prior to their sale to consumers. We experienced product recalls in May 2009 and October 2010, both of which were unrelated to our electric powertrain. In May 2009, we initiated a product recall after we determined that a condition caused by insufficient torquing of the rear inner hub flange bolt existed in some of our Tesla Roadsters, as a result of a missed process during the manufacture of the Tesla Roadster glider, which is the partially assembled Tesla Roadster that does not contain our electric powertrain. In October 2010, we initiated a product recall after the 12 volt, low voltage auxiliary cable in a single vehicle chafed against the edge of a carbon fiber panel in the vehicle causing a short, smoke and possible fire behind the right front headlamp of the vehicle. Although the cost of the most recent recall was not material, we may experience additional recalls in the future, which could adversely affect our brand in our target markets and could adversely affect our business, prospects and results of operations.

Our electric vehicles, including the Tesla Roadster and Model S, may not perform consistent with customers' expectations or consistent with other vehicles currently available. For example, our electric vehicles may not have the durability or longevity of current vehicles, and may not be as easy to repair as other vehicles currently on the market. Any product defects or any other failure of our performance electric vehicles to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims, harm to our brand and reputation, and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

---

[Table of Contents](#)

*We have very limited experience servicing our vehicles and we are using a different service model from the one typically used in the industry. If we are unable to address the service requirements of our existing and future customers our business will be materially and adversely affected.*

If we are unable to successfully address the service requirements of our existing and future customers our business and prospects will be materially and adversely affected. In addition, we anticipate the level and quality of the service we provide our Tesla Roadster customers will have a direct impact on the success of the Model S and our future vehicles. If we are unable to satisfactorily service our Tesla Roadster customers, our ability to generate customer loyalty, grow our business and sell additional Tesla Roadsters as well as Model S sedans could be impaired.

We have very limited experience servicing our vehicles. We do not plan to begin production of any Model S vehicles until mid-2012 with higher volume production not occurring until 2013, and do not have any experience servicing these cars as they do not exist currently. Servicing electric vehicles is different than servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques.

We plan to service our performance electric vehicles through our company-owned Tesla stores and through our mobile service technicians known as the Tesla Rangers. Most of our Tesla stores are equipped to actively service our performance electric vehicles. However, certain stores have been open for less than one year, and to date we have only limited experience servicing our performance vehicles through our Tesla stores. Going forward, we intend to build separate sales and service locations in several markets, but to date have limited experience with separate sales and service locations within a geographic market. We will need to open additional Tesla stores with service capabilities and standalone service locations, as well as hire and train significant numbers of new employees to staff these centers and act as Tesla Rangers, in order to successfully maintain our fleet of delivered performance electric vehicles. We only implemented our Tesla Rangers program in October 2009 and have limited experience in deploying them to service our customers' vehicles. There can be no assurance that these service arrangements or our limited experience servicing our vehicles will adequately address the service requirements of our customers to their satisfaction, or that we will have sufficient resources to meet these service requirement in a timely manner as the volume of vehicles we are able to deliver annually increases.

We do not expect to be able to open Tesla stores in all the geographic areas in which our existing and potential customers may reside. In order to address the service needs of customers that are not in geographical proximity to our service centers, we plan to either transport those vehicles to the nearest Tesla store or service center for servicing or deploy our mobile Tesla Rangers to service the vehicles at the customer's location. These special arrangements may be expensive and we may not be able to recoup the costs of providing these services to our customers. In addition, a number of potential customers may choose not to purchase our vehicles because of the lack of a more widespread service network. If we do not adequately address our customers' service needs, our brand and reputation will be adversely affected, which in turn, could have a material and adverse impact on our business, financial condition, operating results and prospects.

Traditional automobile manufacturers in the United States do not provide maintenance and repair services directly. Consumers must rather service their vehicles through franchised dealerships or through third party maintenance service providers. We do not have any such arrangements with third party service providers and it is unclear when or even whether such third party service providers will be able to acquire the expertise to service our vehicles. At this point, we anticipate that we will be providing substantially all of the service for our vehicles for the foreseeable future. As our vehicles are placed in more locations, we may encounter negative reactions from our consumers who are frustrated that they cannot use local service stations to the same extent as they have with their conventional automobiles and this frustration may result in negative publicity and reduced sales, thereby harming our business and prospects.

---

## [Table of Contents](#)

In addition, the motor vehicle industry laws in many states require that service facilities be available with respect to vehicles physically sold from locations in the state. Whether these laws would also require that service facilities be available with respect to vehicles sold over the internet to consumers in a state in which we have no physical presence is uncertain. While we believe our Tesla Ranger program and our practice of shipping customers' vehicles to our nearest Tesla store for service would satisfy regulators in these circumstances, without seeking formal regulatory guidance, there are no assurances that regulators will not attempt to require that we provide physical service facilities in their states. Further, certain state franchise laws which prohibit manufacturers from being licensed as a dealer or acting in the capacity of dealer also restrict manufacturers from providing vehicle service. If issues arise in connection with these laws, certain aspects of Tesla's service program would need to be restructured to comply with state law, which may harm our business.

***We may not succeed in continuing to establish, maintain and strengthen the Tesla brand, which would materially and adversely affect customer acceptance of our vehicles and components and our business, revenues and prospects.***

Our business and prospects are heavily dependent on our ability to develop, maintain and strengthen the Tesla brand. Any failure to develop, maintain and strengthen our brand may materially and adversely affect our ability to sell the Tesla Roadster and Model S and future planned electric vehicles, including the Model X, and sell our electric powertrain components. If we do not continue to establish, maintain and strengthen our brand, we may lose the opportunity to build a critical mass of customers. Promoting and positioning our brand will likely depend significantly on our ability to provide high quality electric cars and maintenance and repair services, and we have very limited experience in these areas. In addition, we expect that our ability to develop, maintain and strengthen the Tesla brand will also depend heavily on the success of our marketing efforts. To date, we have limited experience with marketing activities as we have relied primarily on the internet, word of mouth and attendance at industry trade shows to promote our brand. To further promote our brand, we may be required to change our marketing practices, which could result in substantially increased advertising expenses, including the need to use traditional media such as television, radio and print. The automobile industry is intensely competitive, and we may not be successful in building, maintaining and strengthening our brand. Many of our current and potential competitors, particularly automobile manufacturers headquartered in Detroit, Japan and the European Union, have greater name recognition, broader customer relationships and substantially greater marketing resources than we do. If we do not develop and maintain a strong brand, our business, prospects, financial condition and operating results will be materially and adversely impacted.

***We are dependent upon our relationship with Lotus for the manufacturing of the Tesla Roadster.***

In July 2005, we entered into a supply agreement with Lotus, which was amended in March 2010, pursuant to which Lotus agreed to assist with the design and manufacture of our Tesla Roadster. Although we complete the final assembly of our Tesla Roadster in our Menlo Park facility for vehicles destined for the United States market, currently we are dependent upon Lotus to complete the initial portion of the assembly process of the Tesla Roadster for us in Hethel, England and we expect this to continue until we discontinue sales of our current generation Tesla Roadster. The partially assembled vehicles manufactured by Lotus do not contain our electric powertrain and are referred to as gliders. We currently intend to manufacture gliders with Lotus for our current generation Tesla Roadster until January 2012. We intend to use these gliders in the manufacturing of the Tesla Roadster to both fulfill orders placed in 2011 as well as new orders placed in 2012 until our supply of gliders is exhausted. Accordingly, we intend to offer a limited number of Tesla Roadsters for sale in the second half of 2011 and in 2012.

---

## [Table of Contents](#)

Pursuant to the supply agreement with Lotus, we are obligated to purchase 2,500 partially assembled or fully assembled vehicles over the term of the agreement. If we are unable to meet this volume requirement, we are still responsible for payment to Lotus of the lesser of (i) the sum of Lotus' actual incurred costs and an agreed upon profit margin per vehicle up to the minimum volume requirement or (ii) £5,400,000. Our present plans do not call for the purchase of more than 2,500 vehicles and gliders from Lotus. Because we are dependent upon our relationship with Lotus for the manufacturing of the Tesla Roadster, our business depends on Lotus continuing to operate as a viable and solvent entity and to continue to produce the Tesla Roadster vehicles and gliders pursuant to our supply agreement. Any delay or discontinuance by Lotus of delivery of the Tesla Roadster vehicles and gliders or failure by Lotus to produce the vehicles and gliders in accordance with quality standards would have a material adverse effect on our business, prospects, operating results and financial condition.

***Our recent agreement with Toyota contains risks and uncertainties that, if realized, could have a materially adverse impact on our operating results.***

In July 2011, we entered into a supply and services agreement with Toyota for the supply of a validated electric powertrain system, including a battery, charging system, inverter, motor, gearbox and associated software which will be integrated into an electric vehicle version of the Toyota RAV4. Pursuant to this agreement, we expect that Toyota will pay us approximately \$100 million between 2012 and 2014 based on our delivery of electric powertrain systems. The payments to us are not guaranteed and will only occur upon the delivery of powertrain systems that meet Toyota's specifications. Toyota has no obligation to buy any systems from us, and if Toyota does not order the anticipated systems from us, we will not receive the revenues we anticipate from this agreement. The agreement further requires that we meet customary obligations such as timely deliveries, warranty and product defect obligations. Our failure to meet these obligations could have a materially adverse impact on our operating results.

Additionally, although we have discussed new business opportunities with Toyota, there is no guarantee that we will be able to reach agreement with Toyota regarding such opportunities at all or on terms and conditions that are favorable to us.

***We are currently expanding and improving our information technology systems. If these implementations are not successful, our business and operations could be disrupted and our operating results could be harmed.***

We are currently expanding and improving our information technology systems to assist us in the management of our business. In particular, our production of the Model S will necessitate the improvement, design and development of more expanded supply chain systems to support our operations as well as production and shop floor management. The implementation of new software management platforms and the addition of these platforms at new locations require significant management time, support and cost. Moreover, there are inherent risks associated with developing, improving and expanding our core systems, including supply chain disruptions that may affect our ability to obtain supplies when needed or to deliver vehicles to our Tesla stores and customers. We cannot be sure that these expanded systems will be fully or effectively implemented on a timely basis, if at all. If we do not successfully implement this project, our operations may be disrupted and our operating results could be harmed. In addition, the new systems may not operate as we expect them to, and we may be required to expend significant resources to correct problems or find alternative sources for performing these functions.

---

## [Table of Contents](#)

***If our vehicle owners customize our vehicles or change the charging infrastructure with aftermarket products, the vehicle may not operate properly, which could harm our business.***

Automobile enthusiasts may seek to “hack” our vehicles to modify its performance which could compromise vehicle safety systems. Also, we are aware of customers who have customized their vehicles with after-market parts that may compromise driver safety. For example, some customers have installed seats that elevate the driver such that airbag and other safety systems could be compromised. Other customers have changed wheels and tires, while others have installed large speaker systems that may impact the electrical systems of the vehicle. We have not tested, nor do we endorse, such changes or products. In addition, customer use of improper external cabling or unsafe charging outlets can expose our customers to injury from high voltage electricity. Such unauthorized modifications could reduce the safety of our vehicles and any injuries resulting from such modifications could result in adverse publicity which would negatively affect our brand and harm our business, prospects, financial condition and operating results.

***The success of our business depends on attracting and retaining a large number of customers. If we are unable to do so, we will not be able to achieve profitability.***

Our success depends on attracting a large number of potential customers to purchase our electric vehicles. As September 30, 2011, we had accepted reservations for approximately 6,500 Model S sedans. If our existing and prospective customers do not perceive our vehicles and services to be of sufficiently high value and quality, cost competitive and appealing in aesthetics or performance, or if the final production version of the Model S is not sufficiently similar to the drivable design prototype, we may not be able to retain our current customers or attract new customers, investors may lose confidence in us, and our business and prospects, operating results and financial condition may suffer as a result. In addition, because our performance electric vehicles to date have been sold largely through word of mouth marketing efforts, we may be required to incur significantly higher and more sustained advertising and promotional expenditures than we have previously incurred to attract customers, and use more traditional advertising techniques. In addition, if we engage in traditional advertising, we may face review by consumer protection enforcement agencies and may incur significant expenses to ensure that our advertising claims are fully supported. To date, we have limited experience selling our electric vehicles and we may not be successful in attracting and retaining a large number of customers. For example, a significant number of our stores have been open for less than one year and a portion of our sales team come from backgrounds other than automotive. If for any of these reasons we are not able to attract and maintain customers, our business, prospects, operating results and financial condition would be materially harmed.

***Regulators could review our practice of taking reservation payments and, if the practice is deemed to violate applicable law, we could be required to pay penalties or refund the reservation payments that we have received for vehicles that are not immediately available for delivery, to stop accepting additional reservation payments, to restructure certain aspects of our reservation program, and potentially to suspend or revoke our licenses to manufacture and sell our vehicles.***

We have not yet commenced production of our Model S sedan which we currently plan for mid-2012. For customers interested in reserving the Model S, we require an initial refundable reservation payment of at least \$5,000. As of September 30, 2011, we had collected reservation payments for Model S sedans in an aggregate amount of \$62.1 million. At this time, we do not plan to hold reservation payments separately or in an escrow or trust fund or pay any interest on reservation payments except to the extent applicable state laws require us to do so. We generally use these funds for working capital and other general corporate purposes.

---

## [Table of Contents](#)

California laws, and potentially the laws of other states, restrict the ability of licensed auto dealers to advertise or take deposits for vehicles before the vehicles are available to the dealer from the manufacturer. In November 2007, we became aware that the New Motor Vehicle Board of the California Department of Transportation has considered whether our reservation policies and advertising comply with the California Vehicle Code. To date, we have not received any communications on this topic from the New Motor Vehicle Board or the Department of Motor Vehicles (DMV), which has the power to enforce these laws. There can be no assurance that the DMV will not take the position that our vehicle reservation or advertising practices violate the law. We expect that if the DMV determines that we may have violated the law, it would initially discuss its concerns with us and request voluntary compliance. If we are ultimately found to be in violation of California law, we might be precluded from taking reservation payments, and the DMV could take other actions against us, including levying fines and requiring us to refund reservation payments. Resolution of any inquiry may also involve restructuring certain aspects of the reservation program. In addition, California is currently the only jurisdiction in which we have licenses to both manufacture and sell our vehicles so any limitation imposed on our operations in California may be particularly damaging to our business. The DMV also has the power to suspend licenses to manufacture and sell vehicles in California, following a hearing on the merits, which it has typically exercised in cases of significant or repeat violations and/or a refusal to comply with DMV directions.

Certain states may have specific laws which apply to reservation payments accepted by dealers, or manufacturers selling directly to consumers, or both. For example, the state of Washington requires that reservation payments or other payments 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 dealer and may not be used by the dealer. Consequently, we established a segregated account for reservation payments in the state of Washington in January 2010. There can be no assurance that other state or foreign jurisdictions will not require similar segregation of reservation payments received from customers. Our inability to access these funds for working capital purposes could harm our liquidity.

Furthermore, while we have performed an analysis of the principal laws in the European Union relating to our distribution model and believe we comply with such laws, we have not performed a complete analysis in all foreign jurisdictions in which we may sell vehicles. Accordingly, there may be laws in jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our vehicle reservation practices or other business practices. Even for those jurisdictions we have analyzed, the laws in this area can be complex, difficult to interpret and may change over time. If our vehicle reservation or advertising practices or other business practices were found to violate the laws of a jurisdiction, we may face exposure under those laws and our business and prospects would be adversely affected. For example, if we are required to return reservation payment amounts, we may need to raise additional funds to make such payments. There can be no assurance that such funding would be available on a timely basis on commercially reasonable terms, if at all. If a court were to find that our reservation agreement or advertising does not comply with state laws, we may face exposure under those laws which may include exposure under consumer protection statutes such as those that deal with unfair competition and false advertising. Moreover, reductions in our cash as a result of redemptions or an inability to take reservation payments could also make it more difficult for us to obtain additional financing. The prospect of reductions in cash, even if unrealized, may also make it more difficult to obtain financing.

---

## [Table of Contents](#)

***Our plan to expand our network of Tesla stores will require significant cash investments and management resources and may not meet our expectations with respect to additional sales of our electric vehicles. In addition, we may not be able to open stores in certain states.***

Our plan to expand our network of Tesla stores will require significant cash investments and management resources and may not meet our expectations with respect to additional sales of our electric vehicles. This planned global expansion of Tesla stores may not have the desired effect of increasing sales and expanding our brand presence to the degree we are anticipating. Furthermore there can be no assurances that we will be able to construct additional storefronts on the budget or timeline we have established. We will also need to ensure we are in compliance with any regulatory requirements applicable to the sale of our vehicles in those jurisdictions, which could take considerable time and expense. If we experience any delays in expanding our network of Tesla stores, this could lead to a decrease in sales of our vehicles and could negatively impact our business, prospects, financial condition and operating results. We have opened Tesla stores in major metropolitan areas throughout the United States, Europe and Japan. We plan to open additional stores, with a goal of establishing approximately 50 stores globally within the next several years in connection with the Model S rollout. However, we may not be able to expand our network at such rate and our planned expansion of our network of Tesla stores will require significant cash investment and management resources, as well as efficiency in the execution of establishing these storefronts and in hiring and training the necessary employees to effectively sell our vehicles.

Furthermore, certain states and foreign jurisdictions may have permit requirements, franchise dealer laws or similar laws or regulations that may preclude or restrict our ability to open stores or sell vehicles out of such states and jurisdictions. Any such prohibition or restriction may lead to decreased sales in such jurisdictions, which could harm our business, prospects and operating results.

***We offer a leasing alternative to customers, which exposes us to risks commonly associated with the prolonged ownership of vehicles and the extension of consumer credit.***

We began offering a leasing alternative to customers of our Tesla Roadster in the United States market in February 2010 through our wholly owned subsidiary Tesla Motors Leasing, Inc. During the latter half of 2010, we began offering a leasing alternative for the Tesla Roadster in Canada through our Canadian subsidiary. Under our program, we currently permit qualifying customers to lease the Tesla Roadster for 36 months, after which time they have the option of either returning the vehicle to us or purchasing it for a predetermined residual value. We retain responsibility for the timely collection of payments from our customers, and are therefore exposed to the possibility of loss from a customer's failure to make payments according to contract terms.

As we retain ownership of the vehicle and customers have the option of returning the vehicle to us after the lease is complete, we also are exposed to the risk that the vehicles' residual value may be lower than our estimates and the volume of vehicles returned to us may be higher than our estimates. Currently, there is only a very limited secondary market for our electric vehicles in particular, and electric vehicles in general, on which to base our estimates, and such a secondary market may not develop in the future. Our credit losses could exceed our expectations or our residual value and return volume estimates could prove to be adversely incorrect, either of which could harm our financial condition and operating results.

***We face risks associated with our international operations, including unfavorable regulatory, political, tax and labor conditions, which could harm our business.***

We face risks associated with our international operations, including possible unfavorable regulatory, political, tax and labor conditions, which could harm our business. We currently have international operations and subsidiaries in Australia, Canada, Denmark, France, Germany, Hong Kong, Italy, Japan, Monaco, Netherlands, Singapore, Switzerland and the United Kingdom that are subject to the legal, political, regulatory and social requirements and economic conditions in these jurisdictions. Additionally, as part of our growth strategy, we intend to expand our sales, maintenance and repair services internationally. However, we have limited experience to date selling and servicing our vehicles internationally and such expansion would require us to make significant expenditures, including the hiring of local employees and establishing facilities, in advance of generating any revenue. We are subject to a number of risks associated with international business activities that may increase our costs, impact our ability to sell our electric vehicles and require significant management attention. These risks include:

- conforming our vehicles to various international regulatory requirements where our vehicles are sold, or homologation;

---

## [Table of Contents](#)

- difficulty in staffing and managing foreign operations;
- difficulties attracting customers in new jurisdictions;
- foreign government taxes, regulations and permit requirements, including foreign taxes that we may not be able to offset against taxes imposed upon us in the United States, and foreign tax and other laws limiting our ability to repatriate funds to the United States;
- fluctuations in foreign currency exchange rates and interest rates, including risks related to any interest rate swap or other hedging activities we undertake;
- our ability to enforce our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as do the United States, Japan and European countries, which increases the risk of unauthorized, and uncompensated, use of our technology;
- United States and foreign government trade restrictions, tariffs and price or exchange controls;
- foreign labor laws, regulations and restrictions;
- preferences of foreign nations for domestically produced vehicles;
- changes in diplomatic and trade relationships;
- political instability, natural disasters, war or events of terrorism; and
- the strength of international economies.

If we fail to successfully address these risks, our business, prospects, operating results and financial condition could be materially harmed.

### ***Foreign currency movements relative to the U.S. dollar could harm our financial results.***

Our revenues and costs denominated in foreign currencies are not completely matched. For example, a portion of our costs and expenses for the three and nine months ended September 30, 2011 was denominated in foreign currencies, principally the British pound. This is primarily due to the contract with Lotus in the United Kingdom to assemble the Tesla Roadster vehicles and gliders. If the value of the U.S. dollar depreciates significantly against the British pound, our costs as measured in U.S. dollars will correspondingly increase. Similarly, a weakening of the U.S. dollar against the yen could cause our Asian suppliers to significantly raise their prices. However, we do not currently have sufficient revenues denominated in these currencies to fully offset the impact of such cost increases. As a result, our operating results could be adversely affected. Conversely, we have greater revenues than costs denominated in other currencies, principally the euro. In this case, a strengthening of the dollar against the euro from current levels would tend to reduce our revenues as measured in U.S. dollars.

---

## [Table of Contents](#)

### ***The unavailability, reduction or elimination of government and economic incentives could have a material adverse effect on our business, financial condition, operating results and prospects.***

Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, the reduced need for such subsidies and incentives due to the perceived success of the electric vehicle, fiscal tightening or other reasons may result in the diminished competitiveness of the alternative fuel vehicle industry generally or our electric vehicles in particular. This could materially and adversely affect the growth of the alternative fuel automobile markets and our business, prospects, financial condition and operating results.

Our growth depends in part on the availability and amounts of government subsidies and economic incentives for alternative fuel vehicles generally and performance electric vehicles specifically. For example, in December 2009, we finalized an arrangement with the California Alternative Energy and Advanced Transportation Financing Authority that will result in an exemption from California state sales and use taxes for up to \$320 million of manufacturing equipment. To the extent all of this equipment is purchased and would otherwise be subject to California state sales and use tax, we believe this incentive would result in tax savings by us of up to approximately \$31 million over a three year period starting in December 2009. This exemption is only available for equipment that would otherwise be subject to California sales and use taxes and that would be used only for the following three purposes: to establish our production facility for the Model S sedan, to upgrade our Palo Alto powertrain production facility, and to expand our current Tesla Roadster assembly operations at our Menlo Park facility. If we fail to meet these conditions, we would be unable to take full advantage of this tax incentive and our financial position could be harmed. Moreover, events outside of Tesla's control can impact this program. California is currently re-examining this program and if it were to implement changes that limit the available tax incentives, Tesla's ability to continue realization of tax savings would be adversely impacted.

In addition, certain regulations and laws that encourage sales of electric cars through tax credits or other subsidies could be reduced, eliminated or applied in a way that creates an adverse effect against our vehicles, either currently or at any time in the future. For example, while the federal and state governments have from time to time enacted tax credits and other incentives for the purchase of alternative fuel cars, our competitors have more experience and greater resources in working with legislators than we do, and so there is no guarantee that our vehicles would be eligible for tax credits or other incentives provided to alternative fuel vehicles in the future. This would put our vehicles at a competitive disadvantage. As an example at the state level, California recently renewed a rebate program for the purchase of qualified alternative technology vehicles, but reduced the rebate amount from \$5,000 per vehicle to \$2,500 per vehicle due to fewer funds available and increased demand. As an additional example, there is considerable discussion at the federal level over tax reform. Discussions have included reducing or even eliminating the current \$7,500 tax credit available to purchasers of qualified alternative fuel vehicles, including the Tesla Roadster and Model S. Also, government disincentives have been enacted in Europe for gas-powered vehicles, which discourage the use of such vehicles and allow us to set a higher sales price for the Tesla Roadster in Europe. In the event that such disincentives are reduced or eliminated, sales of electric vehicles, including our Tesla Roadster and our Model S, could be adversely affected. Furthermore, low volume manufacturers are exempt from certain regulatory requirements in the United States and the European Union. This provides us with an advantage over high volume manufacturers that must comply with such regulations. Once we reach a certain threshold number of sales in each of the United States and the European Union, we will no longer be able to take advantage of such exemptions in the respective jurisdictions, which could lead us to incur additional design and manufacturing expense. We do not anticipate that we will be able to take advantage of these exemptions with respect to the Model S which we plan to produce at significantly higher volumes than the Tesla Roadster.

---

## [Table of Contents](#)

***If we are unable to grow our sales of electric vehicle components to original equipment manufacturers our financial results may suffer. In addition, if Daimler proceeds with its plans to produce all of its lithium-ion batteries by 2012 as part of a joint venture with Deutsche Accumotive GmbH & Co. KG or if we are unable to identify additional business with Daimler, we are likely to lose a significant customer of our powertrain business.***

We may have trouble attracting and retaining powertrain customers which could adversely affect our business prospects and results. Daimler and its affiliates and Toyota and its affiliates are currently the only customers of our electric powertrain sales and development services. In May 2009, we formalized a development agreement with Daimler as a result of which we performed specified research and development services. In addition, we have been selected by Daimler to supply it with up to 2,100 battery packs and chargers to support a trial of the Smart fortwo electric drive. We began shipping the first of these battery packs and chargers in November 2009. In the first quarter of 2010, Daimler engaged us to assist with the development and production of a battery pack and charger for a pilot fleet of its A-Class electric vehicles to be introduced in Europe during 2011 and we entered into a formal agreement for this arrangement in May 2010. While we recently received a letter of intent from Daimler for a full powertrain program for a vehicle in the Mercedes line, there is no guarantee that we will be able to secure future business with Daimler or its affiliates as it has indicated its intent to produce all of its lithium-ion batteries by 2012 as part of a joint venture with Deutsche Accumotive GmbH & Co. KG and has announced it has entered into a joint venture with BYD Auto to collaborate on the development of an electric car under a jointly owned new brand for the Chinese market. If Daimler goes through with its production plans with Deutsche Accumotive GmbH & Co. KG, we will lose this portion of our powertrain sales. Even if we can attract and retain powertrain customers, there is no assurance that we can adequately pursue such opportunities simultaneously with the execution of our plans for our vehicles.

***Our relationship with Daimler is subject to various risks which could adversely affect our business and future prospects.***

Daimler is purchasing components of our electric powertrain to support a trial of the Smart fortwo electric drive and a pilot fleet of its A-Class electric vehicles in Europe. However, our relationship with Daimler poses various risks to us including:

- potential loss of access to parts that Daimler is providing for the Model S; and
- potential loss of business and adverse publicity to our brand image if there are defects or other problems discovered with our electric powertrain components that Daimler has incorporated into their vehicles.

The occurrence of any of the foregoing could adversely affect our business, prospects, financial condition and operating results.

In addition, our exclusivity and intellectual property agreement, or EIP Agreement, with Daimler North America Corporation (DNAC), an affiliate of Daimler provides that, if a Daimler competitor offers to enter into a competitive strategic transaction with us, we are required to give DNAC notice of such offer and DNAC will have a specified period of time in which to notify us whether it wishes to enter into such transaction with us on the same terms as offered by the third party. Because we will be able to enter into such a transaction with a third party only if DNAC declines to do so, this may decrease the likelihood that we will receive offers from third parties to enter into strategic arrangements in the future.

---

## [Table of Contents](#)

### ***We may not be able to identify adequate strategic relationship opportunities, or form strategic relationships, in the future.***

Strategic business relationships will be an important factor in the growth and success of our business. For example, our strategic relationship with Daimler has provided us with various benefits and we have entered into an agreement for the supply of a validated electric powertrain for the Toyota RAV4 with Toyota. However, there are no assurances that we will be able to identify or secure suitable business relationship opportunities in the future or our competitors may capitalize on such opportunities before we do. Our strategic relationship with Daimler involved Blackstar, an affiliate of Daimler, making a significant equity investment in us as well as a representative from Daimler, Dr. Herbert Kohler, joining our Board. In addition, Toyota made a significant equity investment in us concurrent with the closing of our IPO in July 2010. We may not be able to offer similar benefits to other companies that we would like to establish and maintain strategic relationships with which could impair our ability to establish such relationships. Moreover, identifying such opportunities could demand substantial management time and resources, and negotiating and financing relationships involves significant costs and uncertainties. If we are unable to successfully source and execute on strategic relationship opportunities in the future, our overall growth could be impaired, and our business, prospects and operating results could be materially adversely affected.

### ***If we fail to manage future growth effectively, we may not be able to market and sell our vehicles successfully.***

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, operating results and financial condition. We continue to expand our operations significantly, and additional significant expansion will be required, especially in connection with the planned establishment of our Model S manufacturing facility, our electric powertrain manufacturing facility, the expansion of our network of Tesla stores and service centers, our mobile Tesla Rangers program and requirements of being a public company. Our future operating results depend to a large extent on our ability to manage this expansion and growth successfully. Risks that we face in undertaking this expansion include:

- training new personnel;
- forecasting production and revenue;
- controlling expenses and investments in anticipation of expanded operations;
- establishing or expanding design, manufacturing, sales and service facilities;
- implementing and enhancing administrative infrastructure, systems and processes;
- addressing new markets; and
- expanding international operations.

We intend to continue to hire a significant number of additional personnel, including design and manufacturing personnel and service technicians for our performance electric vehicles. Because our high-performance vehicles are based on a different technology platform than traditional internal combustion engines, individuals with sufficient training in performance electric vehicles may not be available to hire, and we will need to expend significant time and expense training the employees we do hire. Competition for individuals with experience designing, manufacturing and servicing electric vehicles is intense, and we may not be able to attract, assimilate, train or retain additional highly qualified personnel in the future. The failure to attract, integrate, train, motivate and retain these additional employees could seriously harm our business and prospects.

---

[Table of Contents](#)

***If we are unable to attract and/or retain key employees and hire qualified management, technical vehicle engineering, and manufacturing personnel, our ability to compete could be harmed.***

The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our vehicles and services, and negatively impact our business, prospects and operating results. In particular, we are highly dependent on the services of Elon Musk, our Chief Executive Officer, Product Architect and Chairman of our Board of Directors, and JB Straubel, our Chief Technical Officer. None of our key employees is bound by an employment agreement for any specific term. There can be no assurance that we will be able to successfully attract and retain senior leadership necessary to grow our business. Our future success depends upon our ability to attract and retain our executive officers and other key technology, sales, marketing and support personnel and any failure to do so could adversely impact our business, prospects, financial condition and operating results. We have in the past and may in the future experience difficulty in retaining members of our senior management team as well as technical, vehicle engineering and manufacturing personnel. In addition, we do not have “key person” life insurance policies covering any of our officers or other key employees. There is increasing competition for talented individuals with the specialized knowledge of electric vehicles and this competition affects both our ability to retain key employees and hire new ones.

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

We are highly dependent on the services of Elon Musk, our Chief Executive Officer, Product Architect, Chairman of our Board of Directors and largest stockholder. Although Mr. Musk spends significant time with Tesla and is highly active in our management, he does not devote his full time and attention to Tesla. Mr. Musk also currently serves as Chief Executive Officer and Chief Technical Officer of Space Exploration Technologies, a developer and manufacturer of space launch vehicles, and Chairman of SolarCity, a solar equipment installation company.

In addition, our financing agreements with Blackstar contain certain covenants relating to Mr. Musk’s employment as our Chief Executive Officer. These covenants provide that if Mr. Musk is not serving as our Chief Executive Officer at any time until the later of December 31, 2012 or the launch of the Model S, Mr. Musk shall promptly propose a successor Chief Executive Officer and Dr. Kohler, or his successor, must consent to any appointment of such person by our Board of Directors. If at any time during the period from January 1, 2011 through December 31, 2012, Mr. Musk is not serving as either our Chief Executive Officer or Chairman of our Board of Directors for reasons other than his death or disability, and Dr. Kohler, or his successor, has not consented to the appointment of a new Chief Executive Officer or if during such period Mr. Musk renders services to, or invests in, any other automotive OEM other than us, Daimler has the right to terminate any or all of its strategic collaboration agreements with us. If this were to occur, our business would be harmed.

Furthermore, our DOE Loan Facility provides that we will be in default under the facility in the event Mr. Musk and certain of his affiliates fail to own, at any time prior to one year after we complete the project relating to the Model S, at least 65% of the capital stock held by Mr. Musk and such affiliates as of the date of the DOE Loan Facility. Mr. Musk’s shares of our capital stock are held directly by his personal trust.

---

## [Table of Contents](#)

***Many members of our management team are new to the company or to the automobile industry, and execution of our business plan and development strategy could be seriously harmed if integration of our management team into our company is not successful.***

Our business could be seriously harmed if integration of our management team into our company is not successful. We expect that it will take time for our new management team to integrate into our company and it is too early to predict whether this integration will be successful. We have recently experienced significant changes in our management team and expect to continue to experience significant growth in our management team. Our senior management team has only limited experience working together as a group. Specifically, three of the six members of our senior management team have joined us within the last two years. For example, Gilbert Passin, our Vice President of Manufacturing, joined us in January 2010, George Blankenship, our Vice President of Sales and Ownership Experience, joined us in July 2010, and Eric Whitaker, our General Counsel, joined us in October 2010. This lack of long-term experience working together may impact the team's ability to collectively quickly and efficiently respond to problems and effectively manage our business. Although we are taking steps to add senior management personnel that have significant automotive experience, many of the members of our current senior management team have limited or no prior experience in the automobile or electric vehicle industries.

***We are subject to various environmental and safety laws and regulations that could impose substantial costs upon us and cause delays in building our manufacturing facilities.***

As an automobile manufacturer, we and our operations, both in the United States and abroad, are subject to national, state, provincial and/or local environmental, health and safety laws and regulations, including laws relating to the use, handling, storage, disposal and human exposure to hazardous materials. Environmental and health and safety laws and regulations can be complex, and we expect that our business and operations will be affected by future amendments to such laws or other new environmental and health and safety laws which may require us to change our operations, potentially resulting in a material adverse effect on our business. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury and fines and penalties. Capital and operating expenses needed to comply with environmental, health and safety laws and regulations can be significant, and violations may result in substantial fines and penalties, third party damages, suspension of production or a cessation of our operations.

Contamination at properties formerly owned or operated by us, as well as at properties we will own and operate, and properties to which hazardous substances were sent by us, may result in liability for us under environmental laws and regulations, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which can impose liability for the full amount of remediation-related costs without regard to fault, for the investigation and cleanup of contaminated soil and ground water, for building contamination and impacts to human health and for damages to natural resources. The costs of complying with environmental laws and regulations and any claims concerning noncompliance, or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or operating results. We may face unexpected delays in obtaining the necessary permits and approvals required by environmental laws in connection with our planned manufacturing facilities that could require significant time and financial resources and delay our ability to operate these facilities, which would adversely impact our business prospects and operating results.

New United Motor Manufacturing, Inc. (NUMMI) has previously identified environmental conditions at our Fremont facility which affect soil and groundwater, and has undertaken efforts to address these conditions. Although we have been advised by NUMMI that it has documented and managed the environmental issues at the Fremont site, we cannot currently determine with certainty the total potential costs to remediate pre-existing contamination, and we may be exposed to material liability as a result of the existence of any environmental contamination at the Fremont site.

---

## [Table of Contents](#)

As the owner of the Fremont site, we may be responsible under federal and state laws and regulations for the entire investigation and remediation of any environmental contamination at the Fremont site, whether it occurred before or after the date we purchase the property. We have reached an agreement with NUMMI under which, over a ten year period, we will pay the first \$15.0 million of any costs of any governmentally-required remediation activities for contamination that existed prior to the closing of the purchase for any known or unknown environmental conditions (Remediation Activities), and NUMMI has agreed to pay the next \$15.0 million for such Remediation Activities. Our agreement provides, in part, that NUMMI will pay up to the first \$15.0 million on our behalf if such expenses are incurred in the first four years of our agreement, subject to our reimbursement of such costs on the fourth anniversary date of the closing.

On the ten-year anniversary of the closing or whenever \$30.0 million has been spent on the Remediation Activities, whichever comes first, NUMMI's liability to us with respect to Remediation Activities ceases, and we are responsible for any and all environmental conditions at the Fremont site. At that point in time, we have agreed to indemnify, defend, and hold harmless NUMMI from all liability, including attorney fees, or any costs or penalties it may incur arising out of or in connection with any claim relating to environmental conditions and we have released NUMMI for any known or unknown claims except for NUMMI's obligations for representations and warranties under the agreement. As of September 30, 2011, we have accrued \$5.3 million related to these environmental liabilities.

There are no assurances that NUMMI will perform its obligations under our agreement and NUMMI's failure to perform would require us to undertake these obligations at a potentially significant cost and risk to our ability to build, equip, and operate our Model S facility at the Fremont site. Any Remediation Activities or other environmental conditions at the Fremont site could harm our operations and the future use and value of the Fremont site and could delay our production plans for the Model S.

### ***Our business may be adversely affected by union activities.***

Although none of our employees are currently represented by a labor union, it is common throughout the automobile industry generally for many employees at automobile companies to belong to a union, which can result in higher employee costs and increased risk of work stoppages. Our employees may join or seek recognition to form a labor union, or we may be required to become a union signatory. We recently purchased an existing automobile production facility in Fremont, California from NUMMI and we plan to produce our Model S at such facility. Prior employees of NUMMI were union members and our future work force at this facility may be inclined to vote in favor of forming a labor union. We are also directly or indirectly dependent upon companies with unionized work forces, such as parts suppliers and trucking and freight companies, and work stoppages or strikes organized by such unions could have a material adverse impact on our business, financial condition or operating results. For example, certain employees at the sea freight companies through which we ship our Tesla Roadster gliders to the United States after assembly in England may be represented by unions, as may be employees at certain of our suppliers. If a work stoppage occurs, it could delay the manufacture and sale of our performance electric vehicles and have a material adverse effect on our business, prospects, operating results or financial condition. The mere fact that our labor force could be unionized may harm our reputation in the eyes of some investors and thereby negatively affect our stock price. Additionally, the unionization of our labor force could increase our employee costs and decrease our profitability, both of which could adversely affect our business, prospects, financial condition and results of operations.

---

## [Table of Contents](#)

***We are subject to substantial regulation, which is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business and operating results.***

Our performance electric vehicles, the sale of motor vehicles in general and the electronic components used in our vehicles are subject to substantial regulation under international, federal, state, and local laws. We have incurred, and expect to incur in the future, significant costs in complying with these regulations. For example, the Clean Air Act requires that we obtain a Certificate of Conformity issued by the EPA and a California Executive Order issued by the CARB with respect to emissions for our vehicles. We received a Certificate of Conformity for sales of our Tesla Roadsters in 2008 and 2010, but did not receive a Certificate of Conformity for sales of the Tesla Roadster in 2009 until December 21, 2009. In January 2010, we and the EPA entered into an Administrative Settlement Agreement and Audit Policy Determination in which we agreed to pay a civil administrative penalty in the sum of \$275,000 for failing to obtain a Certificate of Conformity for sales of our vehicles in 2009 prior to December 21, 2009.

Regulations related to the electric vehicle industry and alternative energy are currently evolving and we face risks associated with changes to these regulations such as:

- the imposition of a carbon tax or the introduction of a cap-and-trade system on electric utilities could increase the cost of electricity;
- the increase of subsidies for corn and ethanol production could reduce the operating cost of vehicles that use ethanol or a combination of ethanol and gasoline;
- changes to the regulations governing the assembly and transportation of lithium-ion batteries, such as the UN Recommendations of the Safe Transport of Dangerous Goods Model Regulations or regulations adopted by the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) could increase the cost of lithium-ion batteries;
- the amendment or rescission of the federal law and regulations mandating increased fuel economy in the United States, referred to as the Corporate Average Fuel Economy (CAFE) standards could reduce new business opportunities for our powertrain sales and development activities;
- amendment or rescission of federal greenhouse gas tailpipe emission regulations administered by EPA under the authority of the Clean Air Act could reduce new business opportunities for our powertrain sales and development activities;
- increased sensitivity by regulators to the needs of established automobile manufacturers with large employment bases, high fixed costs and business models based on the internal combustion engine could lead them to pass regulations that could reduce the compliance costs of such established manufacturers or mitigate the effects of government efforts to promote alternative fuel vehicles; and
- changes to regulations governing exporting of our products could increase our costs incurred to deliver products outside the United States or force us to charge a higher price for our vehicles in such jurisdictions.

In addition, as the automotive industry moves towards greater use of electronics for vehicle systems, NHTSA and other regulatory bodies may in the future increase regulation for these electronic systems.

---

## [Table of Contents](#)

To the extent the laws change, some or all of our vehicles may not comply with applicable international, federal, state or local laws, which would have an adverse effect on our business. Compliance with changing regulations could be burdensome, time consuming, and expensive. To the extent compliance with new regulations is cost prohibitive, our business, prospects, financial condition and operating results will be adversely affected.

***Certain safety requirements may limit our ability to sell our Tesla Roadster in the United States, which could cause our revenues to decrease.***

The Roadster is, or will be, subject to new safety standards in the United States that have been phased in over the past several years. To the extent that we do not secure, or continue to secure, exemptions from non-compliance with these standards from NHTSA, we will be unable to sell Roadsters produced for sale in the United States after the date of any such exemption denial. These regulations will not prohibit us from selling Roadsters in other countries and would not prohibit us from selling vehicles existing in our inventory at the time of any exemption denial.

The Roadster currently has an exemption from the requirement to install advanced airbags. In November 2010, we filed a request for renewal of this exemption with NHTSA. NHTSA has published notice of receipt of the extension request and at least one adverse comment has been filed against this request by a safety advocacy group. While our request is pending, the existing exemption is automatically extended and we are therefore currently able to sell Roadsters in the United States. If NHTSA denies our request for renewal, our exemption would expire and we would no longer be able to sell Roadsters in the United States that were produced after the date of the denial as the Roadster will not meet the advanced airbag requirements. We currently expect that if this were to occur, we would need to redirect a certain number of Roadsters from the United States to other countries.

In addition, the new electronic stability control (ESC) requirements enacted by NHTSA apply to all new vehicles manufactured on or after September 1, 2011. Tesla was previously excused from these requirements as a small quantity manufacturer during the phase-in of ESC requirements. Starting September 1, 2011, however, all manufacturers, regardless of quantity must ensure their vehicles comply with the new ESC requirements. The Tesla Roadster will not meet the new standard. We have applied for a temporary exemption from these requirements, but NHTSA may not grant that exemption. Without a NHTSA granted exemption, we will not be able to sell any Roadsters in the United States that were produced on or after September 1, 2011. If we are unable to obtain this exemption, we would need to redirect a certain number of Roadsters from the United States to other countries.

***We retain certain personal information about our customers and may be subject to various privacy and consumer protection laws.***

We use our vehicles' electronic systems to log information about each vehicle's use in order to aid us in vehicle diagnostics, repair and maintenance, as well as to help us collect data regarding our customers' charge time, battery usage, mileage and efficiency habits. Our customers may object to the use of this data, which may harm our business. Possession and use of our customers' personal information in conducting our business may subject us to federal and/or state legislative and regulatory burdens in the United States and foreign jurisdictions that could require notification of data breach, restrict our use of such personal information and hinder our ability to acquire new customers or market to existing customers. For example, we are subject to local data protection laws in Europe. We may incur significant expenses to comply with privacy, consumer protection and security standards and protocols imposed by law, regulation, industry standards or contractual obligations. If third parties improperly obtain and use the personal information of our customers, we may be required to expend significant resources to resolve these problems. A major breach of our network security and systems could have serious negative consequences for our businesses and future prospects, including possible fines, penalties and damages, reduced customer demand for our vehicles, and harm to our reputation and brand.

---

## [Table of Contents](#)

### ***Our vehicles make use of lithium-ion battery cells, which on rare occasions have been observed to catch fire or vent smoke and flame.***

The battery pack in the Tesla Roadster makes use of lithium-ion cells. We also currently intend to make use of lithium-ion cells in the battery pack for the Model S and any future vehicles we may produce. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. Highly publicized incidents of laptop computers and cell phones bursting into flames have focused consumer attention on the safety of these cells. The events have also raised questions about the suitability of these lithium-ion cells for automotive applications. To address these questions and concerns, a number of cell manufacturers are pursuing alternative lithium-ion battery cell chemistries to improve safety. We have designed our battery pack to passively contain any single cell's release of energy without spreading to neighboring cells and we are not aware of any such incident in our customers' vehicles. We have tested the batteries and subjected them to damaging treatments such as baking, overcharging, crushing or puncturing to assess our battery pack's response to deliberate and sometimes destructive abuse. However, we have delivered only a limited number of Tesla Roadsters to customers and have limited field experience with our vehicles, especially Model S. Accordingly, there can be no assurance that a field failure of our battery packs will not occur, which could damage the vehicle or lead to personal injury or death and may subject us to lawsuits.

In addition, we store a significant number of lithium-ion cells at our manufacturing facility. Any mishandling of battery cells may cause disruption to the operation of our facilities. While we have implemented safety procedures related to the handling of the cells, there can be no assurance that a safety issue or fire related to the cells would not disrupt our operations. Such damage or injury would likely lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor's electric vehicle, especially those that use a high volume of commodity cells similar to the Tesla Roadster or the Model S, may cause indirect adverse publicity for us and our electric vehicles. Such adverse publicity would negatively affect our brand and harm our business, prospects, financial condition and operating results.

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

We may become subject to product liability claims, which could harm our business, prospects, operating results and financial condition. The automobile industry experiences significant product liability claims and we face inherent risk of exposure to claims in the event our vehicles do not perform as expected or malfunction resulting in personal injury or death. Our risks in this area are particularly pronounced given the limited number of vehicles delivered to date and limited field experience of those vehicles. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about our vehicles and business and inhibit or prevent commercialization of other future vehicle candidates which would have material adverse effect on our brand, business, prospects and operating results. We self insure against the risk of product liability claims. Any lawsuit seeking significant monetary damages may have a material adverse effect on our reputation, business and financial condition. We may not be able to secure additional product liability insurance coverage on commercially acceptable terms or at reasonable costs when needed, particularly if we do face liability for our products and are forced to make a claim under our policy.

---

## [Table of Contents](#)

In connection with the development and sale of our Model S, we will need to comply with various additional safety regulations and requirements that were not applicable to the sales of our Tesla Roadsters, with which it may be expensive or difficult to comply. For example, we will need to pass a range of impact tests for the Model S. We performed similar tests on the Tesla Roadster based on European Union testing standards in connection with sales exceeding certain volume thresholds in Australia and Japan, and two criteria were not met in the test. We may experience difficulties in meeting all the criteria for these or similar tests for our Model S, which may delay our ability to sell the Model S in high volumes in certain jurisdictions.

***We may be compelled to undertake product recalls, which could adversely affect our brand image and financial performance.***

Any product recall in the future may result in adverse publicity, damage our brand and adversely affect our business, prospects, operating results and financial condition. We previously experienced product recalls in May 2009 and October 2010, both of which were unrelated to our electric powertrain. In April 2009, we determined that a condition caused by insufficient torquing of the rear inner hub flange bolt existed in some of our Tesla Roadsters, as a result of a missed process during manufacture of the Tesla Roadster glider. In October 2010, we initiated a product recall after the 12 volt, low voltage auxiliary cable in a single vehicle chafed against the edge of a carbon fiber panel in the vehicle causing a short, smoke and possible fire behind the right front headlamp of the vehicle. The cost of fixing this most recent recall is not material. In the future, we may at various times, voluntarily or involuntarily, initiate a recall if any of our vehicles or electric powertrain components prove to be defective or noncompliant with applicable federal motor vehicle safety standards. Such recalls, voluntary or involuntary, involve significant expense and diversion of management attention and other resources, which could adversely affect our brand image in our target markets and could adversely affect our business, prospects, financial condition and results of operations.

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

If our warranty reserves are inadequate to cover future warranty claims on our vehicles, our business, prospects, financial condition and operating results could be materially and adversely affected. We provide a three year or 36,000 miles New Vehicle Limited Warranty with every Tesla Roadster, which we extended to four years or 50,000 miles for the purchasers of our 2008 Tesla Roadster. In addition, customers have the opportunity to purchase an Extended Service Plan for the period after the end of the New Vehicle Limited Warranty to cover additional services for an additional three years or 36,000 miles, whichever comes first. The New Vehicle Limited Warranty is similar to other vehicle manufacturers' warranty programs and is intended to cover all parts and labor to repair defects in material or workmanship in the body, chassis, suspension, interior, electronic systems, battery, powertrain and brake system. We record and adjust warranty reserves based on changes in estimated costs and actual warranty costs. However, because we only began delivering our first Tesla Roadster in early 2008, we have extremely limited operating experience with our vehicles, and therefore little experience with warranty claims for these vehicles or with estimating warranty reserves. Since we began initiating sales of our vehicles, we have continued to increase our warranty reserves based on our actual warranty claim experience and we may be required to undertake further such increases in the future. As of September 30, 2011, we had warranty reserves of \$6.4 million, and such reserve amount will increase in the future as Model S is sold. We could in the future become subject to a significant and unexpected warranty expense. There can be no assurances that our currently existing or future warranty reserves will be sufficient to cover all claims or that our limited experience with warranty claims will adequately address the needs of our customers to their satisfaction.

---

## [Table of Contents](#)

***We may need to defend ourselves against patent or trademark infringement claims, which may be time-consuming and would cause us to incur substantial costs.***

Companies, organizations or individuals, including our competitors, may hold or obtain patents, trademarks or other proprietary rights that would prevent, limit or interfere with our ability to make, use, develop or sell our vehicles or components, which could make it more difficult for us to operate our business. From time to time, we may receive inquiries from holders of patents or trademarks inquiring whether we infringe their proprietary rights. Companies holding patents or other intellectual property rights relating to battery packs, electric motors or electronic power management systems may bring suits alleging infringement of such rights or otherwise asserting their rights and seeking licenses. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease selling, incorporating or using vehicles that incorporate the challenged intellectual property;
- pay substantial damages;
- obtain a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign our vehicles.

In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources and management attention.

We also license patents and other intellectual property from third parties, and we may face claims that our use of this in-licensed technology infringes the rights of others. In that case, we may seek indemnification from our licensors under our license contracts with them. However, our rights to indemnification may be unavailable or insufficient to cover our costs and losses, depending on our use of the technology, whether we choose to retain control over conduct of the litigation, and other factors.

***Our business will be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties.***

Any failure to protect our proprietary rights adequately could result in our competitors offering similar products, potentially resulting in the loss of some of our competitive advantage and a decrease in our revenue which would adversely affect our business, prospects, financial condition and operating results. Our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of patents, patent applications, trade secrets, including know-how, employee and third party nondisclosure agreements, copyright laws, trademarks, intellectual property licenses and other contractual rights to establish and protect our proprietary rights in our technology. We have also received from third parties patent licenses related to manufacturing our vehicles.

---

## [Table of Contents](#)

The protection provided by the patent laws is and will be important to our future opportunities. However, such patents and agreements and various other measures we take to protect our intellectual property from use by others may not be effective for various reasons, including the following:

- our pending patent applications may not result in the issuance of patents;
- our patents, if issued, may not be broad enough to protect our proprietary rights;
- the patents we have been granted may be challenged, invalidated or circumvented because of the pre-existence of similar patented or unpatented intellectual property rights or for other reasons;
- the costs associated with enforcing patents, confidentiality and invention agreements or other intellectual property rights may make aggressive enforcement impracticable;
- current and future competitors may independently develop similar technology, duplicate our vehicles or design new vehicles in a way that circumvents our patents; and
- our in-licensed patents may be invalidated or the holders of these patents may seek to breach our license arrangements.

Existing trademark and trade secret laws and confidentiality agreements afford only limited protection. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States, and policing the unauthorized use of our intellectual property is difficult.

***Our patent applications may not result in issued patents, which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.***

We cannot be certain that we are the first creator of inventions covered by pending patent applications or the first to file patent applications on these inventions, nor can we be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. In addition, patent applications filed in foreign countries are subject to laws, rules and procedures that differ from those of the United States, and thus we cannot be certain that foreign patent applications related to issued U.S. patents will result in issued patents. Furthermore, even if these patent applications do result in issued patents, some foreign countries provide significantly less effective patent enforcement than in the United States.

The status of patents involves complex legal and factual questions and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued, or that our patents and any patents that may be issued to us in the near future will afford protection against competitors with similar technology. In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, prospects, financial condition and operating results.

***Three of our trademark applications in the European Union remain subject to three outstanding opposition proceedings.***

We currently sell and market our vehicles in the European Union under the Tesla trademark. We have three trademark applications in the European Union for the Tesla trademark. These are each subject to an outstanding opposition proceeding brought by a prior owner of trademarks consisting of the word Tesla. If we cannot resolve these remaining oppositions and thereby secure registered rights in the European Union, this will reduce our ability to challenge third party users of the Tesla trademark and dilute the value of the mark as our exclusive brand name in the European Union. In addition, there is a risk that the remaining prior rights owner could in the future take action to challenge our use of the Tesla mark in the European Union. This would have a severe impact on our position in the European Union and may inhibit our ability to use the Tesla mark in the European Union. If we were prevented from using the Tesla trademark in the European Union, we would need to expend significant additional financial and marketing resources on establishing an alternative brand identity in these markets.

---

[Table of Contents](#)

***We may be subject to claims arising from an airplane crash in which three of our employees died.***

In February 2010, three of our employees died in a crash of an airplane owned and piloted by one of our employees. The plane crashed in a neighborhood in East Palo Alto, California. The plane also clipped an electrical tower, causing a power loss and business interruption in parts of Palo Alto, including Stanford University. The cause of the accident is under investigation by the National Transportation Safety Board.

In November 2010, a case was filed against us relating to the crash in California Superior Court. In that case, plaintiffs allege claims for negligence, negligent infliction of emotional distress, trespass, and violations of federal and state aviation laws and regulations against all defendants, and seek compensation for real property damage and loss of use, as well as personal property and emotional distress/bodily injury claims. In December 2010, the plaintiffs settled claims for real property damage but retained their claims for emotional distress, bodily injury and personal property damage. We believe that these remaining claims are covered by insurance.

As a result of the accident, other claims, including but not limited to those arising from loss of or damage to personal property, business interruption losses or damage to the electrical tower and surrounding area, may be asserted against various parties including us. The time and attention of our management may also be diverted in defending such claims. We may also incur costs both in defending against any claims and for any judgments if such claims are adversely determined.

***Our corporate or manufacturing facilities or operations could be damaged or adversely affected as a result of disasters or unpredictable events.***

Our corporate headquarters in Palo Alto and manufacturing facilities Fremont are located in Northern California, a region known for seismic activity. If major disasters such as earthquakes, fires, floods, hurricanes, wars, terrorist attacks, computer viruses, pandemics or other events occur, or our information system or communications network breaks down or operates improperly, our headquarters and production facilities may be seriously damaged, or we may have to stop or delay production and shipment of our products. In addition, our lease for our Palo Alto facility permits the landlord to terminate the lease following a casualty event if the needed repairs are in excess of certain thresholds and we do not agree to pay for any uninsured amounts. We may incur expenses relating to such damages, which could have a material adverse impact on our business, operating results and financial condition.

***If our suppliers fail to use ethical business practices and comply with applicable laws and regulations, our brand image could be harmed due to negative publicity.***

Our core values, which include developing the highest quality electric vehicles while operating with integrity, are an important component of our brand image, which makes our reputation particularly sensitive to allegations of unethical business practices. We do not control our independent suppliers or their business practices. Accordingly, we cannot guarantee their compliance with ethical business practices, such as environmental responsibility, fair wage practices, and compliance with child labor laws, among others. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations.

---

## [Table of Contents](#)

Violation of labor or other laws by our suppliers or the divergence of an independent supplier's labor or other practices from those generally accepted as ethical in the United States or other markets in which we do business could also attract negative publicity for us and our brand. This could diminish the value of our brand image and reduce demand for our performance electric vehicles if, as a result of such violation, we were to attract negative publicity. If we, or other manufacturers in our industry, encounter similar problems in the future, it could harm our brand image, business, prospects, financial condition and operating results.

***We are obligated to develop and maintain proper and effective internal control over financial reporting. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in our company and, as a result, the value of our common stock.***

We will be required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the year ending December 31, 2011. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting, as well as a statement that our independent registered public accounting firm has issued an attestation report on the effectiveness of our internal control over financial reporting.

We are in the process of compiling the system and process documentation necessary to perform the evaluation needed to comply with Section 404. Our independent registered public accounting firm identified two material weaknesses in our internal control over financial reporting for the year ended December 31, 2007 which have been remediated, and they or we may identify other material weaknesses in the future. We may not be able to remediate future material weaknesses, or to complete our evaluation, testing and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. If we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which would have a material adverse effect on the price of our common stock.

### **Risks Related to the Ownership of our Common Stock**

***Concentration of ownership among our existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions.***

As of September 30, 2011, our executive officers, directors and their affiliates beneficially own, in the aggregate, approximately 49.3% of our outstanding shares of common stock. In particular, Elon Musk, our Chief Executive Officer, Product Architect and Chairman of our Board of Directors, beneficially owned approximately 28.9% of our outstanding shares of common stock as of September 30, 2011. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

---

[Table of Contents](#)

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

Our shares of common stock began trading on the Nasdaq Global Select Market on June 29, 2010 and therefore, the trading history for our common stock has been limited. In addition, the trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. For example, after opening at \$17.00 per share at the IPO, our common stock has experienced an intra-day trading high of \$36.42 per share and a low of \$14.98 per share through September 30, 2011.

In addition, the stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock during the period following this offering. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

***A majority of our total outstanding shares are held by insiders and may be sold on a stock exchange in the near future. The large number of shares eligible for public sale or subject to rights requiring us to register them for public sale could depress the market price of our common stock.***

The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market in the future, and the perception that these sales could occur may also depress the market price of our common stock. Stockholders owning a majority of our total outstanding shares are entitled, under contracts providing for registration rights, to require us to register shares of our common stock owned by them for public sale in the United States, subject to the restrictions of Rule 144. In addition, we have registered shares previously issued or reserved for future issuance under our equity compensation plans and agreements, a portion of which are related to outstanding option awards. Subject to the satisfaction of applicable exercise periods and, in certain cases, lock-up agreements, the shares of common stock issued upon exercise of outstanding options will be available for immediate resale in the United States in the open market. Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our common stock.

***Mr. Musk has borrowed funds from an affiliate of our underwriter and pledged shares of our common stock to secure this borrowing. The forced sale of these shares pursuant to a margin call could cause our stock price to decline and negatively impact our business.***

Goldman Sachs Bank USA, an affiliate of Goldman, Sachs & Co., made a loan in the amount of \$35 million to Elon Musk and the Elon Musk Revocable Trust dated July 22, 2003, or the Trust. Interest on the loan accrues at market rates. Goldman Sachs Bank USA received customary fees and expense reimbursements in connection with this loan. Goldman Sachs Bank USA made additional extensions of credit in an aggregate amount of \$50 million to Elon Musk and the Trust and Mr. Musk used a portion of the proceeds of such loans to purchase shares in the June 2011 private placement. Interest on the loans will accrue at market rates. Goldman Sachs Bank USA will receive customary fees and expense reimbursements in connection with these loans. As a regulated entity, Goldman Sachs Bank USA makes decisions regarding making and managing its loans independent of Goldman, Sachs & Co. Mr. Musk and Goldman have a long-standing relationship of almost a decade. We are not a party to these loans, which are full recourse against Mr. Musk and the Trust and are secured by a pledge of a portion of the Tesla common stock currently owned by Mr. Musk and the Trust and other shares of capital stock of unrelated entities owned by Mr. Musk and the Trust. The terms of these loans were negotiated directly between Mr. Musk and Goldman Sachs Bank USA.

---

## [Table of Contents](#)

If the price of our common stock declines, Mr. Musk may be forced by Goldman Sachs Bank USA to provide additional collateral for the loans or to sell shares of Tesla common stock in order to remain within the margin limitations imposed under the terms of his loans. The loans between Goldman Sachs Bank USA and Mr. Musk and the Trust prohibit the non-pledged shares currently owned by Mr. Musk and the Trust from being pledged to secure other loans. In addition, our DOE Loan Facility requires Mr. Musk and certain of his affiliates, until one year after we complete the project relating to the Model S Facility, to own at least 65% of the Tesla capital stock held by them as of the date of the DOE Loan Facility, and a failure to comply would be an event of default that could result in an acceleration of all obligations under the DOE Loan Facility documents and the exercise of other remedies by the DOE. These factors may limit Mr. Musk's ability to either pledge additional shares of Tesla common stock or sell shares of Tesla common stock as a means to avoid or satisfy a margin call with respect to his pledged Tesla common stock in the event of a decline in our stock price that is large enough to trigger a margin call. Any sales of common stock following a margin call that is not satisfied may cause the price of our common stock to decline further.

***Anti-takeover provisions contained in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could impair a takeover attempt.***

Our certificate of incorporation, bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying or preventing an acquisition deemed undesirable by our board of directors. Our corporate governance documents include provisions:

- creating a classified board of directors whose members serve staggered three-year terms;
- authorizing "blank check" preferred stock, which could be issued by the board without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;
- controlling the procedures for the conduct and scheduling of board and stockholder meetings; and
- providing the board of directors with the express power to postpone previously scheduled annual meetings and to cancel previously scheduled special meetings.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

---

## [Table of Contents](#)

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock.

Any provision of our certificate of incorporation or bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

***Our current agreements with Blackstar, an affiliate of Daimler, contain certain restrictions that decrease the likelihood that potential acquirors would make a bid to acquire us.***

Our financing agreements with Blackstar, an affiliate of Daimler, include certain restrictions that decrease the likelihood that potential acquirors would make a bid to acquire us, including giving Blackstar a right of notice on any acquisition proposal we receive for which we determine to engage in further discussions with a potential acquiror or otherwise pursue. Blackstar then has a right, within a specified time period, to submit a competing acquisition proposal. In addition, Elon Musk, our Chief Executive Officer, Product Architect, Chairman and largest stockholder, has agreed that he will not transfer any shares of our capital stock beneficially owned by him to any automobile original equipment manufacturer, other than Daimler, without Blackstar's consent. Mr. Musk has further agreed not to vote any shares of our capital stock beneficially owned by him in favor of a deemed liquidation transaction to which any automobile original equipment manufacturer, other than Daimler, is a party without Blackstar's consent. These provisions could delay or prevent hostile takeovers and changes in control of us, which could cause our stock price or trading volume to fall.

***If securities or industry analysts publishing research or reports about us, our business or our market change their recommendations regarding our stock adversely or cease to publish research or reports about us, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

***We do not expect to declare any dividends in the foreseeable future.***

We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors may need to rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not purchase our common stock.

---

[Table of Contents](#)

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

**Use of Proceeds**

Our initial public offering (IPO) of common stock was effected through a Registration Statement on Form S-1 (File No. 333-164593) which was declared effective by the Securities and Exchange Commission on June 28, 2010, which registered an aggregate of 15,295,000 shares of our common stock, including 1,995,000 shares that the underwriters had the option to purchase. On July 2, 2010, we sold 11,880,600 shares on for gross proceeds of \$202.0 million. We paid the underwriters underwriting discounts and commissions of \$13.1 million and incurred additional offering costs of approximately \$4.4 million. After deducting the underwriting discounts and commissions and the offering costs, we received net proceeds of approximately \$184.5 million. There was no material change in the use of proceeds from our IPO as described in our final prospectus filed with the SEC pursuant to Rule 424(b). From the effective date of the registration statement through September 30, 2011, we have used the net proceeds of the offering for working capital purposes, including expenditures for inventory, personnel costs, equipment and other operating expenses.

**ITEM 3. DEFAULT UPON SENIOR SECURITIES**

None.

**ITEM 4. (REMOVED AND RESERVED)**

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

See Index to Exhibits at end of report.

---

[Table of Contents](#)

**SIGNATURES**

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

Date: November 14, 2011

Tesla Motors, Inc.

/s/ Deepak Ahuja

Deepak Ahuja  
Chief Financial Officer  
(Principal Financial Officer, Principal Accounting Officer and  
Duly Authorized Officer)

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation of the Registrant	S-1	333-164593	3.1	January 29, 2010	
3.2	Amended and Restated Bylaws of the Registrant	S-1	333-164593	3.2	January 29, 2010	
4.1	Specimen common stock certificate of the Registrant	S-1/A	333-164593	4.1	May 27, 2010	
4.2	Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, between Registrant and certain holders of the Registrant's capital stock named therein	S-1	333-164593	4.2	January 29, 2010	
4.2A	Amendment to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 20, 2010, between Registrant and certain holders of the Registrant's capital stock named therein	S-1/A	333-164593	4.2A	May 27, 2010	
4.2B	Amendment to Fifth Amended and Restated Investors' Rights Agreement between Registrant, Toyota Motor Corporation and certain holders of the Registrant's capital stock named therein	S-1/A	333-164593	4.2B	May 27, 2010	
4.2C	Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of June 14, 2010, between Registrant and certain holders of the Registrant's capital stock named therein	S-1/A	333-164593	4.2C	June 15, 2010	
4.2D	Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of November 2, 2010, between Registrant and certain holders of the Registrant's capital stock named therein	8-K	001-34756	4.1	November 4, 2010	
4.2E	Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 25, 2011, between Registrant and certain holders of the Registrant's capital stock named therein	S-1/A	333-174466	4.2E	June 2, 2011	
4.2F	Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 30, 2011, between Registrant and certain holders of the Registrant's capital stock named therein	8-K	001-34756	4.1	June 1, 2011	
4.3	Registration Rights Agreement between the United States Department of Energy and the Registrant dated as of January 20, 2010	S-1/A	333- 164593	4.3	May 27, 2010	
4.3A	Amendment to Registration Rights Agreement between the United States Department of Energy and the Registrant dated as of May 21, 2010	S-1/A	333- 164593	4.3A	May 27, 2010	
4.4	Warrant to Purchase Shares of Preferred Stock issued by the Registrant to the United States Department of Energy dated January 20, 2010	S-1/A	333- 164593	4.4	May 27, 2010	
4.5	Warrant to Purchase Shares of Common Stock issued by the Registrant to the United States Department of Energy dated May 21, 2010	S-1/A	333- 164593	4.5	May 27, 2010	
4.6	Form of Warrant to Purchase Shares of Common Stock dated as of May 20, 2010	S-1/A	333- 164593	4.6	May 27, 2010	
4.7	Common Stock Purchase Agreement, dated as of May 20, 2010, between the Registrant and Toyota Motor Corporation	S-1/A	333- 164593	4.7	May 27, 2010	
10.1†	Supply and Services Agreement between Toyota Motor Engineering & Manufacturing North America, Inc. and the Registrant dated as of July 15, 2011					X

---

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>				<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	
31.1	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Executive Officer	—	—	—	—	X
31.2	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Financial Officer	—	—	—	—	X
32.1*	Section 1350 Certifications	—	—	—	—	
101.INS	XBRL Instance Document	—	—	—	—	
101.SCH	XBRL Taxonomy Extension Schema Document	—	—	—	—	
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	—	—	—	—	
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	—	—	—	—	
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	—	—	—	—	

\* Furnished herewith

† Confidential treatment has been requested for portions of this exhibit

## SUPPLY AND SERVICES AGREEMENT

This Supply and Services Agreement (“**Agreement**”) is made and entered into as of July 15, 2011 (“**Effective Date**”) by and between Toyota Motor Engineering & Manufacturing North America, Inc., a Kentucky corporation, with offices at 25 Atlantic Avenue, Erlanger, Kentucky 41018 (“**TEMA**”), on behalf of itself and as purchasing and paying agent for TMMC (defined below) and Tesla Motors, Inc., a Delaware corporation, with offices at 3500 Deer Creek Road, Palo Alto, CA 94304, U.S.A. (“**Tesla**”). Toyota and Tesla may be referred to herein each individually as a “**Party**” and collectively as the “**Parties**”.

## RECITALS

A. TMC (as defined below) and Tesla have executed that certain Prototype Lease to Use and Services Agreement, dated July 15, 2010, pursuant to which Tesla will: (i) lease to TMC and its affiliates for their use operational prototype RAV4 electric vehicles that Tesla will equip with an existing Tesla powertrain system; and (ii) provide services to customize RAV4s owned by TMC to equip such RAV4s with an existing Tesla powertrain system;

B. TMC and Tesla have executed that certain Phase 1 Contract Services Agreement, dated October 6, 2010 (the “**Phase 1 Agreement**”), pursuant to which TMC and Tesla will develop: (i) certain interfaces and technology between a Tesla powertrain system and the RAV4; and (ii) the final specifications for RAV4 EV (as defined below);

C. The Parties desire that Tesla supply Tesla Products to Toyota and perform Services for Toyota, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

## 1. DEFINITIONS

1.1 “**Accepted Products**” has the meaning set forth in Section 9.4.

1.2 “**Affiliate**” means, with respect to any Party, any other party directly or indirectly controlling, controlled by, or under common control with such Party. For purposes of this definition, “control” when used with respect to any entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of at least fifty percent (50%) of voting securities, by contract or otherwise; the terms “controlling” and “controlled” have meanings correlative to the foregoing. An entity will cease to be an Affiliate if such control relationship no longer exists.

1.3 “**Agreement**” has the meaning set forth in the preamble.

1.4 “**ASN**” has the meaning set forth in Section 5.4.

1.5 “**Authorized Distributors**” means distributors to whom TMS sells RAV4EVs and Service Parts.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

1.6 “**Business Day**” means any day, other than a Saturday or Sunday, on which banks are open for business in San Francisco, California.

1.7 “**Common Tooling**” has the meaning set forth in Section 18.1.5.

1.8 “**Completion Target Date**” has the meaning set forth in Section 18.7.1.

1.9 “**Confidential Information**” has the meaning set forth in the Phase 1 Agreement. For avoidance of doubt, all information disclosed under this Agreement that would be Confidential Information under the Phase 1 Agreement if such information were disclosed under the Phase 1 Agreement shall be considered Confidential Information under this Agreement.

1.10 “**Conforming Invoice**” has the meaning set forth in Section 9.4.

1.11 “**Contract Documents**” mean the additional documents used by the Parties to supplement this Agreement and further define the relationship between the Parties. Contract Documents will be both in written form and Electronic Forms (defined below), and will be provided by one Party to another independently of this Agreement. Contract Documents will be created one time in some instances, and will be created, amended and modified on an ongoing basis in other instances. Contract Documents are not independent contractual agreements between the Parties, but constitute additional terms and provisions to this Agreement if and when agreed upon by the Parties in writing to their content and inclusion. Notwithstanding the foregoing, electronic transmissions between the parties relating to orders and shipments of Tesla Products as is customary in the automotive industry and not inconsistent with the terms of this Agreement shall also constitute Contract Documents unless objected to by the other Party in a timely manner. The applicable parties to each Contract Document shall be Tesla and the Toyota Affiliate or Affiliates responsible for carrying out Toyota’s responsibilities under the terms of such Contract Document. All Contract Documents are incorporated by reference in this Agreement, notwithstanding the fact that Contract Documents may not be physically attached to this Agreement. Notwithstanding any of the above, any document which modifies the pricing, Delivery Dates, identity of Products, warranty or Services shall be executed in writing by both Parties prior to it being designated as a Contract Document.

1.12 “**Delivery Dates**” means the scheduled delivery dates for the Products, as set forth in the applicable exhibit, as the same may be updated and set forth in one or more Contract Documents.

1.13 “**Drop Ship Service Parts**” means Powertrain Batteries and refurbished parts sold under this agreement as Service Parts.

1.14 “**EDI**” means electronic data interface.

1.15 “**Effective Date**” has the meaning set forth in the preamble.

1.16 “**Electronic Forms**” has the meaning set forth in Section 17.5.1.

1.17 “**Environmental Reports**” has the meaning set forth in Section 10.4.2.

1.18 “**EV Specifications Book**” means the [\*\*\*] as was provided by Tesla to Toyota, as the same may be amended by written agreement of the Parties from time to time.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

1.19 “**EV Systems Start-Up Services**” means the services to be provided by Tesla to TMMC during the start-up of Production of the RAV4 EV and to be negotiated in good faith by the Parties following execution of this Agreement.

1.20 “**Field Action**” means an action taken by Toyota after consultation with Tesla as outlined in Section 15.3.2 to address defects in vehicles, which action follows consultation with and/or is accompanied by submission of a Defect Information Report (DIR) and/or Non-Compliance Information Report (NCIR) or other required report to a governmental agency or body having jurisdiction over the vehicles in question.

1.21 “**Final Approval**” has the meaning set forth in Section 18.1.7.

1.22 “**Guiding Principles**” has the meaning set forth in Section 20.2.

1.23 “**Initial Term**” has the meaning set forth in Section 16.1.

1.24 “**Installation Site**” means the TMMC manufacturing facility located in Woodstock, Ontario, Canada, or any other site designated by Toyota in its discretion. In the event Toyota changes the location of the Installation Site, Tesla shall have no obligation to provide additional support services in connection with such change absent a separate agreement between the parties for such services.

1.25 “**Intellectual Property Rights**” means all rights in or arising under: (i) any patents; (ii) all copyrights in both published and unpublished works, all registrations and applications therefore and all associated moral rights; (iii) all know-how, trade secrets, inventions (whether patented or not), confidential information, software, technical information, data, process technology, plans, drawings and blueprints required to be disclosed by either Party to the other Party; (iv) databases, data compilations and collections and technical data; and (v) any other similar rights in or arising worldwide, in each case, whether arising under the laws of the United States or any other state, country, or jurisdiction.

1.26 “**Late Shipment**” has the meaning set forth in Section 5.6.

1.27 “**Local Community**” has the meaning set forth in Section 20.2.

1.28 “**MSDS**” has the meaning set forth in Section 10.4.2.

1.29 “[\*\*\*]” has the meaning set forth in Section 9.5.

1.30 “**Other Tooling**” has the meaning set forth in Section 18.3.

1.31 “**Packaging**” has the meaning set forth in Section 13.1.

1.32 “**Part Approval**” has the meaning set forth in Section 18.1.6.

1.33 “**Parties**” has the meaning set forth in the preamble.

1.34 “**Party**” has the meaning set forth in the preamble.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

1.35 “**Payment Procedures**” has the meaning set forth in Section 9.4.

1.36 “**Personnel**” when used with reference to either Party, means such Party’s employees, agents or other third parties acting under the authority from such Party working on matters relating to performance under this Agreement.

1.37 “**Phase 1 Agreement**” has the meaning set forth in Recital B.

1.38 “**Powertrain Battery**” means the powertrain battery parts set forth on Exhibit B, as the same may be updated and set forth in one or more Contract Documents.

1.39 “**Powertrain Battery Capacity**” has the meaning set forth in the EV Specification Book.

1.40 “**Powertrain Battery Specifications**” means the specifications for the Powertrain Battery set forth on Exhibit B, as the same may be updated and set forth in one or more Contract Documents.

1.41 “**Powertrain Battery Warranty**” has the meaning set forth in Exhibit J.

1.42 “**Powertrain Parts**” means the powertrain parts set forth on Exhibit C, as the same may be updated and set forth in the EV Specification Book.

1.43 “**Powertrain Parts Specifications**” means the specifications for the Powertrain Parts set forth on Exhibit C, as the same may be updated and set forth in one or more Contract Documents.

1.44 “**Powertrain Parts Warranty**” has the meaning set forth in Exhibit J.

1.45 “**Production Parts**” means, collectively, the Powertrain Battery and the Powertrain Parts.

1.46 “**Production Parts Specifications**” means the Powertrain Battery Specifications and the Powertrain Parts Specifications.

1.47 “**Production Timetable**” has the meaning set forth in Section 18.7.1.

1.48 “**Products**” means the Production Parts, the Testing Equipment and the Service Parts.

1.49 “**Product Liability Claim**” means a third party claim, suit, action or proceeding against Toyota and/or Tesla based on personal injury suffered and alleged to have arisen from a defect in design, manufacture, maintenance or servicing of the RAV4 EV, including alleged defects in the design or manufacture of the Products supplied hereunder.

1.50 “**Project Manager**” has the meaning set forth in Section 2.6.

1.51 “**Property**” has the meaning set forth in Section 6.1.

1.52 “**Quality Requirements**” has the meaning set forth in Section 14.1.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

1.53 “**RAV4 EV**” means a RAV4 Platform that incorporates the Powertrain Parts and Powertrain Battery.

1.54 “**RAV4 Platform**” means the RAV4 EV which is the subject of this Agreement, less any Powertrain Parts and less the Powertrain Battery.

1.55 “**Rejected Products**” has the meaning set forth in Section 12.1.

1.56 “**Rejected Tooling**” has the meaning set forth in Section 18.6.2.

1.57 “**Remedial Work**” has the meaning set forth in Section 12.2.1.

1.58 “**Renewal Term**” has the meaning set forth in Section 16.1.

1.59 “**Required Changes**” has the meaning set forth in Section 4.2.1.

1.60 “**Second Source**” has the meaning set forth in Section 4.4.

1.61 “**Service Parts**” means the service parts and refurbished parts that are Tesla Products and are also set forth on Exhibit D, as the same may be updated and set forth in one or more Contract Documents.

1.62 “**Service Parts Specifications**” means the specifications for the Service Parts set forth on Exhibit D, as the same may be updated and set forth in one or more Contract Documents.

1.63 “**Services**” means the services Tesla provides under this Agreement, including, without limitation, the Battery Installation Start-Up Services, the services provided by Tesla under the Refurbished Parts Program described in Section 3.5, the Services Support as described in Section 2.10, the Technical Assistance as described in Section 19 and all other obligations performed by Tesla under this Agreement.

1.64 “**Short Products**” has the meaning set forth in Section 12.1.

1.65 “**Specifications**” means the Powertrain Battery Specifications, Powertrain Parts Specifications, Service Parts Specifications and the Testing Equipment Specifications.

1.66 “**SOP**” means the date on which Toyota commences production of the RAV4 EV for sale to consumers and shall exclude production of prototype or other test vehicles, notwithstanding the ultimate sale of such a prototype or other vehicle to a consumer. [\*\*\*], but notwithstanding this or other announced SOP date, SOP shall actually be on a date determined by Toyota following Tesla’s satisfaction of all development targets for Tesla Products as mutually agreed upon by the parties using the RDDP process (as defined in Section 4.2.1). Such development targets shall include those design and development objectives and the implementation strategy more particularly set forth in Exhibit M.

1.67 “**SPT Costs**” has the meaning set forth in Section 18.3.

1.68 “**Supplier Interface**” has the meaning set forth in Section 17.1.

1.69 “**Support Work**” has the meaning set forth in Section 12.4.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

1.70 “**Technology**” means inventions, technology, discoveries, improvements, processes, designs, ideas, know-how, notes, memoranda and documentation.

1.71 “**TEMA**” has the meaning set forth in the preamble.

1.72 “**Term**” has the meaning set forth in Section 16.1.

1.73 “**Tesla**” has the meaning set forth in the preamble.

1.74 “**Tesla Content**” has the meaning set forth in Section 17.4.

1.75 “**Tesla Financial Information**” has the meaning set forth in Section 4.6.

1.76 “**Tesla Tooling**” has the meaning set forth in Section 18.3.

1.77 “**Tesla Payables**” has the meaning set forth in Section 9.4.

1.78 “**Tesla Products**” means the Powertrain Battery and Powertrain Parts that are designated and manufactured by Tesla and listed on Exhibit L; Tesla Products shall not include any parts or components provided directly by third party suppliers and drop shipped to Toyota.

1.79 “**Tesla Property**” has the meaning set forth in Section 6.1.

1.80 “**Tesla Site**” has the meaning set forth in Section 4.9.

1.81 “**Tesla Written Records**” has the meaning set forth in Section 17.5.5.

1.82 “**Testing Equipment**” means testing equipment set forth on Exhibit E, as the same may be updated and set forth in one or more Contract Documents.

1.83 “**Testing Equipment Specifications**” means the specifications for the Testing Equipment set forth on Exhibit E, as the same may be updated and set forth in one or more Contract Documents.

1.84 “**TIMT**” has the meaning set forth in Section 4.2.1.

1.85 “**TMC**” means Toyota Motor Corporation.

1.86 “**TMMC**” means Toyota Motor Manufacturing Canada, Inc.

1.87 “**TMS**” means Toyota Motor Sales, U.S.A., Inc.

1.88 “**Tooling**” has the meaning set forth in Section 18.1.1.

1.89 “**Tooling Authorization**” has the meaning set forth in Section 18.1.2.

1.90 “**Tooling Contract**” has the meaning set forth in Section 18.8.

1.91 “**Tooling Invoice**” has the meaning set forth in Section 18.5.3.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

- 1.92 “**Tooling Payment**” has the meaning set forth in Section 18.5.3.
- 1.93 “**Tooling Price**” has the meaning set forth in Section 18.5.1.
- 1.94 “**Tooling Purchase Order**” has the meaning set forth in Section 18.1.3.
- 1.95 “**Tooling Third Party**” has the meaning set forth in Section 18.1.8.
- 1.96 “**Toolmaker**” has the meaning set forth in Section 18.6.1.
- 1.97 “**Toyota**” shall include TEMA and any TEMA Affiliates, including, without limitation, TMC, TMMC and TMS.
- 1.98 “**Toyota Price**” has the meaning set forth in Section 9.1.
- 1.99 “**Toyota Property**” has the meaning set forth in Section 6.2.
- 1.100 “**Toyota Supplier Network**” has the meaning set forth in Section 17.1.
- 1.101 “**Toyota Tooling**” has the meaning set forth in Section 18.1.4.
- 1.102 “**Toyota Written Forms**” has the meaning set forth in Section 17.5.1.
- 1.103 “**Toyota Written Records**” has the meaning set forth in Section 17.5.6.
- 1.104 “**TSN Procedures**” has the meaning set forth in Section 17.1.
- 1.105 “**TTC**” means Toyota Technical Center, a division of TEMA.
- 1.106 “**WARP**” has the meaning set forth in Section 17.1.
- 1.107 “**Warranty Claims**” has the meaning set forth in Section 11.1.
- 1.108 “**Warranty Diagnosis Procedures**” has the meaning set forth in Exhibit K.
- 1.109 “**Warranty Period**” has the meaning set forth in Section 11.2.

**2. PRODUCTION PARTS SUPPLY AND SERVICES PROCESS OVERVIEW**

2.1 RAV4 EV Production Schedule. The Parties shall mutually agree on the [\*\*\*].

2.2 Supply of Production Parts. Tesla will supply the Production Parts that meet the Specifications to TMMC in accordance with the ordering process as the same may be updated and set forth in one or more Contract Documents and communicated through the Toyota Supplier Network and the delivery process set forth in Section 5 of this Agreement.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

2.3 Inspection of the Production Parts. All Production Parts shall be received subject to TMMC's acceptance or rejection on or before the end of the Production Parts Inspection Period. Payment by Toyota for the Production Parts under this Agreement prior to the end of the Production Parts Inspection Period shall not constitute its acceptance thereof, nor shall such payment remove Tesla's responsibility for nonconforming Powertrain Parts. "**Production Parts Inspection Period**" shall mean: (i) three (3) business days following receipt by TMMC or its Affiliates or designees; or (ii) the time at which TMMC shall have completed its final inspection of the RAV4 EV into which the Production Parts are incorporated, whichever is shorter. Products not rejected by TMMC within the Production Parts Inspection Period shall be deemed Accepted Products under Section 9.4. However, acceptance under this section does not relieve Tesla from liability for defective Tesla Products as otherwise set forth in Section 12.

2.4 Installation of Production Parts and Testing. After TMMC receives the Production Parts from Tesla, TMMC will: (i) install the Production Parts in RAV4 Platforms; and (ii) test the completed RAV4 EVs according to the testing procedures determined by TMMC from time to time.

2.5 EV Systems Start-Up Services at Installation Site. Tesla will provide the Battery Installation Start-Up Services as mutually agreed upon between the Parties.

2.6 Project Managers. Each Party agrees to appoint a project manager ("**Project Manager**") who shall be the principal point of contact to whom all communications between the Parties with respect to the collaboration, development and other activities under this Agreement shall be directed. The initial Project Manager for Tesla shall be [\*\*\*], and the initial Project Manager for Toyota shall be [\*\*\*]. Each Party may change its Project Manager at any time by providing written notice to the other Party. Each Project Manager may appoint a designee to act on the Project Manager's behalf for certain tasks by providing written notice to the other Party, provided such designee shall not have the authority to act on its Project Manager's behalf until such written notice has been provided to the other Party. The Project Managers shall hold monthly meetings to discuss the progress of the activities under this Agreement.

2.7 NHTSA Testing / FMVSS Compliance. TMMC shall be, and shall be identified as, the manufacturer of the RAV4 EV. TMMC's status as manufacturer shall be evidenced in the vehicle identification number and in all labels required for the RAV4 EV. Toyota will be responsible for NHTSA testing and FMVSS compliance testing for the RAV4 EV and Tesla will provide all commercially reasonable assistance in connection with such testing in accordance with this Agreement.

2.8 Meeting Products Targets in the Event of Loss or Damage. In the event of loss of or damage to Products, RAV4 Platforms or any other items needed to produce a RAV4 EV, without regard to fault and without limiting the rights of either Party set forth herein, the Parties agree to cooperate in good faith and utilize best efforts to produce additional Products and/or RAV4 Platforms to restore any lost production.

2.9 Most Favored Technology. The Parties shall periodically discuss improvements to the Products and agree to negotiate in good faith the cost and feasibility of introducing such improvements into the Products through a separate agreement.

2.10 Tesla Support for RAV4 EV Service. Tesla shall provide support for Toyota service activities as more particularly set forth in Exhibit K ("Service Support").

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

### 3. TESTING EQUIPMENT, SERVICE PARTS AND REFURBISHED PARTS PROGRAM

3.1 Service Parts. Tesla will supply Service Parts that meet the Service Parts Specifications to Toyota in accordance with the ordering process set forth in Exhibit D, as the same may be updated and set forth in one or more Contract Documents, and the delivery process set forth in this Agreement. For the first [\*\*\*] years following execution of this Agreement, pricing for new Service Parts shall be the same as the price for each such part as when purchased as a Production Part, except that Service Parts may also include incremental packaging and administration costs. Thereafter, the pricing for new Service Parts for the remainder of the timeframe set forth in section 3.3 shall be at a price to be agreed upon by the Parties. Notwithstanding the foregoing, Toyota and Tesla contemplate that certain Service Parts will be provided pursuant to the RAV4 EV Refurbishment Program as set forth in Section 3.5 and on Exhibit H.

3.2 Production Testing Equipment. Tesla will supply one set of the Production Testing Equipment as set forth in Exhibit E and the specifications for such equipment, as the same may be updated and set forth in one or more Contract Documents and the specifications for such Production Testing Equipment. Pricing for the Production Testing Equipment shall be as set forth in Section 9.1.

3.3 Service Parts Post Production Purchases. Upon request by Toyota at any time and from time to time, Tesla shall make available all Service Parts for [\*\*\*] years following the final production run of the Products. Lead time, price and delivery of these Service Parts shall be negotiated on an as required basis.

3.4 End of Production Products Purchases. Toyota has the right to make one time purchase for all Tesla Products at the end of the production run. Toyota shall notify Tesla at least one hundred twenty (120) days prior to end of production and Toyota shall provide Tesla with a firm order at least ninety (90) days prior to the last Tesla Product production run for any final production Tesla Product orders. In complying with the terms of this provision, Tesla may, at its sole discretion, fulfill such orders using identical or substantially similar Tesla Products to the Tesla Products ordered, provided that parts other than identical parts may only be provided if and to the extent Tesla has complied with the provisions of Section 4.2. To the extent that Tesla is unable to fulfill the order, the Parties shall negotiate in good faith to determine a mutually satisfactory resolution.

3.5 Refurbished Parts Program. As requested by Toyota, Tesla shall participate in the RAV4 EV Refurbished Parts Program with respect to the Powertrain Battery and certain other Tesla Products, having the elements described in Exhibit H, as the same may be updated and set forth in one or more Contract Documents.

### 4. PRODUCT SUPPLY

4.1 Third Party Beneficiary Relationship: Limitation on Use of Products. This Agreement encompasses a continuous and ongoing purchasing relationship between Toyota and Tesla. In conjunction with the purchasing relationship, TEMA has the right under this Agreement to act as: (i) an agent on behalf of TMMC and TMS as purchaser of Products or Services; or (ii) a purchaser of Products or Services on its own behalf. Where context or course of dealing between the parties requires, any reference to Toyota shall be deemed to be a reference to (or include) TEMA, TMMC and/or TMS. Under no circumstances shall the purchase of any Product, Product part or component, regardless of whether by Toyota or any Toyota Affiliate, be used for any purpose except such purposes as are consistent with and reasonably required in connection with the performance of this Agreement, such purposes to include the servicing of RAV4 EVs produced under the terms of this Agreement, unless the express written consent of Tesla is first obtained. Toyota will use reasonable efforts, and will put in place appropriate inventory control procedures, to discourage its dealers from selling Service Parts for any purpose inconsistent with this Section 4.1.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

4.2 Changes to Products.

4.2.1 Required Changes. Either Party reserves the right at any time and from time to time to request changes necessary to address agreed upon performance or operational issues (specifications, engineering, design or other changes; collectively, “**Required Changes**”), and the other Party agrees to investigate, and if mutually agreeable, make such Required Changes. Following release of production RDDP (Request for Design and Development Process), all such Required Changes shall be processed in accordance with the Toyota Technical Information Manual for Tesla (“TIMT”) to be negotiated between the parties in good faith and separately agreed to in writing and in accordance with other provisions of this Section, as the same may be updated and set forth in one or more Contract Documents. Required Changes may also extend to: (i) drawings for the Tesla Products supplied or manufactured by Tesla; and (ii) Services provided by Tesla, and may additionally extend to the scope of work covered by the applicable Contract Documents including such matters as inspection, testing, quality control and other matters ancillary to the production of Tesla Products. Required Changes shall be evidenced by one or more Contract Documents, and all Required Changes shall be made in strict conformity with such Contract Documents.

4.2.2 Adjustments for Required Changes. Toyota and Tesla will negotiate in good faith the charges for such Required Changes, including, but not limited to engineering fees, tooling and equipment costs, and obsolescence charges for any Products made obsolete or otherwise impracticable by such Required Changes. Any price or other adjustment shall be evidenced by a new or revised Contract Document.

4.2.3 Changes to Products. Tesla shall notify Toyota in writing to the extent Tesla desires to make any engineering or other changes to the Products. Toyota shall approve or reject such changes within thirty (30) days after such notice in its reasonable discretion. Any such changes not explicitly accepted or rejected in writing shall be deemed rejected after the thirty (30) day period. In the event Toyota rejects any Tesla recommended changes and following Tesla’s request, Tesla and Toyota shall negotiate in good faith modifications to price, delivery times, warranty periods and any other matters relating to Toyota’s rejection of a requested change. In the event of desired changes to the Products, Tesla shall follow the procedures set forth in the TIMT.

4.2.4 Shorter Timeframes for Changes Allowed. Notwithstanding the provisions of Section 4.2.3 the Parties may agree upon a shorter timeframe necessary for the approval of any engineering or other changes to the Products. Upon agreement by the Parties, such shorter timeframes shall become binding upon the Parties.

4.3 Shortage of Supply. In the event Tesla has reason to believe that delivery of any Products may not be made in strict conformity with the applicable delivery schedules set forth in one or more Contract Documents, whether due to force majeure or otherwise, Tesla shall immediately notify Toyota setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Tesla shall use commercially reasonable efforts to allocate supplies of all Products to Toyota on a pro rata basis with Tesla’s other customers.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

4.4 Second Source. If Tesla is unable to fill any order for Tesla Products, then upon prior written approval and consent by Tesla: (i) Toyota may cover by making in good faith any reasonable purchase of parts in substitution for any portion of the Products that Tesla fails to supply (such entity supplying such portion of Products, the “**Second Source**”); and (ii) Tesla shall promptly reimburse Toyota an amount equal to the excess of the aggregate purchase price, including, without limitation, all costs related to shipping and customs, over the aggregate purchase price of the portion of Products for which Toyota acquires the substitute parts. In connection with the foregoing, at Toyota’s election and with Tesla’s prior written approval and consent, Tesla: (x) hereby grants the Second Source a license under all of Tesla’s Intellectual Property Rights to the extent necessary for the Second Source to manufacture and supply such Products that Tesla fails to supply; and (y) will promptly deliver to Toyota all documentation necessary for the Second Source to manufacture and supply such Products that Tesla fails to supply.

4.5 Access to Premises. Toyota and its authorized representatives shall have the right from time to time and on at least three (3) Business Days notice to Tesla to access Tesla’s premises, as Toyota may reasonably request, to verify, validate and monitor: (i) compliance with Specifications and Quality Requirements; and (ii) Tesla’s performance or ability to perform under this Agreement. Notwithstanding the foregoing, Toyota may request immediate access to Tesla’s premises in the event it reasonably believes that conditions at Tesla threaten continued production of RAV4 EVs. Upon such request, Tesla shall consider such request in good faith and in a timely manner. Tesla shall have the right to limit or restrict Toyota’s access only to the extent reasonably necessary to protect confidential information of or relating to Tesla, Tesla’s intellectual property, trade secrets and other confidential and proprietary information not directly employed in the Products or the Services delivered under this Agreement, or Tesla’s other customers. In exercising any access rights, Toyota will take commercially reasonable steps to protect the confidentiality of and not interfere with the internal business of Tesla or business relationship between Tesla and any of its other customers.

4.6 Access to Financial Records. No more than once per 12-month period, Toyota and its authorized representatives shall have the right, upon reasonable notice, to request that Tesla provide financial information to complete the SIRAS Entry Excel Template (the “**Tesla Financial Information**”) related to Tesla’s performance under this Agreement to assist Toyota in evaluating the financial stability and strength of Tesla. Toyota shall have the right to copy, evaluate, and provide the Tesla Financial Information to third party consultants assisting with the evaluation who need such information to conduct such assistance and who are bound by confidentiality obligations at least as stringent as that agreed to between Toyota and Tesla. The Tesla Financial Information provided to Toyota shall be protected as Confidential Information under this Agreement, including, but not limited to, Toyota’s disclosure of Confidential Information to third party consultants. Nothing herein shall require Tesla to disclose any information in violation of any law or regulation. Toyota shall comply with all securities laws and regulations in its use of the Tesla Financial Information and shall not permit any director, officer or other employee of Toyota in possession of the Tesla Financial Information to purchase or sell securities of Tesla while in possession of such information or to disclose such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities of Tesla. The Parties agree that all obligations under this provision shall expire upon disclosure by Tesla of the Tesla Financial Information in its periodic reports filed with the Securities and Exchange Commission.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

4.7 Audit. Tesla shall maintain and retain complete and accurate books and records relating to this Agreement, including, without limitation, the production, packaging, storage and shipment of the Tesla Products and provision of the Services. Tesla shall also maintain and retain any other records required to be maintained under this Agreement or required to be kept by any applicable laws. At any time during and within one (1) year following the expiration or termination hereof, upon three (3) Business Days notice and during normal business hours, Toyota will have the right, at its sole cost and expense, to audit Tesla's books, records, documents, reports and other materials related to this Agreement for the sole purposes of verifying its compliance with the terms of this Agreement and evaluation of Tesla's financial condition; provided that such audit is conducted by an independent auditor as designated by Toyota and as reasonably deemed acceptable by Tesla. All information disclosed to such auditor by Tesla in connection with such audit shall be held by the auditor in strict confidence and shall not be disclosed by the auditor to any third party. Notwithstanding the foregoing, the auditor shall disclose a summary of the audited information with Toyota and Toyota may in turn share such information with its legal counsel and financial consultants provided that such third parties are subject to confidentiality obligations no less protective than the terms of this Agreement. The Parties shall agree in advance of the scope of the audit and in no event shall the scope of the audit extend more than two (2) years prior to the date of the audit commencement. All such records shall be retained by Tesla for a period of the lesser of (i) five (5) years; or (ii) one (1) year following the expiration or termination hereof; or longer if required by applicable laws.

4.8 Forecasting and Ordering Process.

4.8.1 Production Parts. Beginning at least [\*\*\*] months prior to SOP, Toyota will supply Tesla with monthly rolling forecasts of its Production Parts purchases for the ensuing [\*\*\*] months as appropriate for use in Tesla's production planning. Such forecasts shall represent binding orders of Product quantity requirements of Toyota for the months one to three. [\*\*\*].

4.8.2 Service Parts. Beginning on a date after SOP to be mutually agreed between Toyota and Tesla, Toyota will supply Tesla with monthly rolling forecasts of its Service Part purchases for the ensuing [\*\*\*] months. The first month of each such [\*\*\*] month forecast shall represent binding estimates of Service Part quantity requirements of Toyota. Actual purchases of Service Parts will be communicated to Tesla by Toyota pursuant to a process set forth in one or more Contract Documents communicated through the Toyota Supplier Network. The quantities of the forecasted orders beyond the then-effective one (1) month binding estimates may be increased or decreased by up to [\*\*\*] of their original amounts with the mutual agreement of the Parties, with Tesla's consent to Toyota's request for a volume change not to be unreasonably withheld. Tesla will provide Toyota with assistance in determining potential demand for Service Products, including without limitation, new and refurbished Powertrain Batteries and Powertrain Parts. Tesla will maintain at least one new Powertrain Battery and one of each of the Powertrain Parts in stock.

4.9 Manufacturing and Shipping Locations. A list of the manufacturing, warehousing and other facilities used to produce, package, store and ship the Products (each a "Tesla Site") is set forth on Exhibit G. Tesla must obtain Toyota's prior written approval (which may be withheld at Toyota's sole discretion) in order to add, remove or substitute any facility listed in Exhibit G.

4.10 Product Testing Procedures. Before packing and shipping Product orders, Tesla shall undertake testing procedures or similar quality assurance measures to ensure each Product meets the applicable Specifications. Toyota shall have the right prior to commencement of, and at any time during, any production, packaging, storage or shipping operations relative to the Products, upon three (3) Business Days notice, to send one or more of its authorized representatives to observe and inspect, during regular business hours, the site of final assembly of Products, solely for quality assurance purposes.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

## 5. DELIVERY

5.1 General. Toyota may require different delivery methods for different Products (as set forth on the applicable Contract Documents communicated through the Toyota Supplier Network). The provisions of this Section 5 shall apply to all Tesla Products regardless of delivery method. In conjunction with the delivery of Products and as designated from time to time by Toyota, Tesla agrees to properly pack, mark and ship Tesla Products in conformity with the packaging and delivery requirements of Toyota and any applicable carrier.

5.2 Delivery Terms. Except as otherwise instructed by Toyota with respect to specific shipments of Products, Tesla shall deliver Tesla Products ordered by Toyota to Toyota's designated carrier at Tesla's U.S. warehouse loading dock and title and risk of loss of Tesla Products shall pass from Tesla to Toyota at the time Tesla puts the Products into the possession of such carrier. Tesla shall ship all Drop Ship Service Parts directly to the ordering dealer at Toyota's cost and expense, in accordance with the processes and instructions agreed to by Tesla and Toyota in Exhibit K hereto. Tesla shall otherwise ship all orders in accordance with instructions given to Tesla by Toyota and include any freight or shipping charges to invoices submitted to Toyota. Logistics costs shall be borne by Toyota as set forth in Section 5.8 below.

5.3 Quantities. The Parties shall agree upon a quantity of Products for release and delivery which supports the agreed upon production schedule and that minimizes manufacturing, packaging and shipping costs to Tesla. Tesla shall deliver Tesla Products only in quantities agreed upon by the Parties for release and shall be responsible for all delivery and return shipping or other costs resulting from shipments that exceed those quantities.

5.4 Packing Slip. Tesla shall prepare and enclose with each shipment a legible packing slip identifying the following information: ship date, shipment identification number, purchase order number(s), part number(s), part quantities, case numbers, quantities per case and the 5-digit vendor code. Tesla shall transmit an Advance Shipping Notification ("ASN") by EDI to the receiving warehouse and Toyota at the time of shipment. The ASN shall include all of the information required by Toyota. In addition, Tesla shall provide to Toyota such other documents and information as Toyota may request in good faith, including, without limitation, a certificate of origin, declaration of hazardous ocean shipment, declaration of dangerous goods (for air shipment), etc.

5.5 Custody. Tesla Products shall remain in the care, custody and control of Tesla until loaded by Tesla Personnel into designated carriers and delivery of the bill of lading thereof to the carrier's representative. Title shall transfer to Toyota as set forth in Section 5.2 above.

5.6 Time is of the Essence. Time will be of the essence in making all deliveries of Products to Toyota. If acts or omissions of either Party result or are likely to result in a failure by Tesla to meet the delivery requirements of Toyota (a "**Late Shipment**"), the Parties shall in good faith allocate expedited shipping costs based on each Party's responsibility for such Late Shipment.

5.7 Non-conforming Shipments. Toyota reserves the right to require Tesla to dispatch Tesla Products arising from non-conforming shipments, freight prepaid, in the most expeditious manner, including, without limitation, premium freight, if Toyota deems it necessary, and Tesla shall immediately comply with any such request at its cost and expense. If the non-conformance is the result of any acts, omissions, or non-performance by Toyota or Toyota's designated freight carrier, then the cost and expense of performance under this subsection shall be borne by Toyota.

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

5.8 Costs of Shipment. Toyota shall pay all costs of shipment of Tesla Products ordered by Toyota after such Tesla Products are put into the possession of the carrier, except for Late Shipments, as well as for other non-conforming shipments (e.g., incorrect quantities, wrong Products, and defective Products). In the event of Late Shipments or other non-conforming shipments, the Parties shall in good faith allocate expedited shipping costs between them, subject to the allocation provisions of Section 5.7 above.

5.9 Reservation of Rights. Prepayment by Tesla for expedited handling of Late Shipments and shipments arising from non-conforming shipments shall not waive Toyota's rights under this Agreement, including, without limitation, Toyota's right to terminate this Agreement pursuant to Section 16.

## 6. PROPERTY OF THE PARTIES

6.1 Tesla Property. Tesla shall at its expense furnish, maintain, keep in good condition and replace when necessary or prudent, all machinery, equipment, jigs, fixtures, test gauges, molds, patterns, transportation equipment and other items (for any party, "**Property**," and for Tesla, "**Tesla Property**") necessary for the production of Tesla Products and provision of Services in conformity with the Specifications of this Agreement and all applicable Contract Documents. The cost of changes to Tesla Property required from time to time by Toyota, whether for Required Changes or otherwise, shall be paid by Toyota, unless otherwise addressed under Section 4.2. All Tesla Property furnished to Toyota shall remain the property of Tesla and, as applicable, be deemed a bailment. Toyota shall bear the risk of loss for any damage to Tesla Property while in Toyota's possession and resulting from Toyota's negligence or willful misconduct. At Toyota's expense, Tesla Property in Toyota's possession shall be marked by Toyota as "PROPERTY OF TESLA," or as otherwise directed by Tesla, and shall be stored and maintained apart from Toyota's Property (and not commingled with the property of Toyota or any third party), free of liens and encumbrances, and in appropriate condition. Tesla Property shall not be used by Toyota for any purpose other than the performance of this Agreement. Tesla Property shall not be removed from Toyota's premises without the prior written approval of Tesla except as may be required for performance under this Agreement. Upon reasonable notice and at reasonable times, Toyota will not unreasonably withhold permission for Tesla to inspect all Tesla Property, and records relating to the property.

6.2 Toyota Property. Property of Toyota ("**Toyota Property**") furnished to Tesla shall remain the property of Toyota and, as applicable, be deemed a bailment. Tesla shall bear the risk of loss for any damage to Toyota Property while in Tesla's possession and resulting from Tesla's negligence or willful misconduct. At Tesla's expense, Toyota Property shall be marked by Tesla as "PROPERTY OF TOYOTA," or as otherwise directed by Toyota, and shall be stored and maintained apart from Tesla's Property (and not commingled with the property of Tesla or any third party), free of liens and encumbrances, and in appropriate condition. Toyota Property shall not be used by Tesla for any purpose other than the performance of this Agreement. Toyota Property shall not be removed from the Installation Site or Tesla's premises without the prior written approval of Toyota except as may be required for performance under this Agreement. Upon reasonable notice and at reasonable times, Tesla will not unreasonably withhold permission for Toyota to inspect all Toyota Property, and records relating to the property.

6.3 No License. Performance by either Party under this Agreement shall not transfer any rights of ownership in, nor license of, nor constitute permission granted by either Party to the other to use: (i) any Parties' Property by the other; or (ii) any Parties' Intellectual Property Rights, except (a) if otherwise agreed upon by both Parties in writing; (b) to the extent necessary for either Party to fulfill its obligations required by this Agreement; or (c) as otherwise provided for in this Agreement.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

6.4 Return of Property. Upon demand, either Party shall immediately release or return all Property to the other. If requested, all Property will be properly packaged, marked and sequenced in accordance with instructions from the requesting Party, or the applicable carrier selected by the requesting Party, for delivery to the location designated by the requesting Party (in which event the requesting Party will pay for all transportation costs). If permitted by law, each Party waives any statutory or other lien or lien rights it may have on or against any Property of the other Party for any work performed on or with such property.

## 7. REPORTS

7.1 Reports. Tesla shall prepare and deliver the reports set forth in the Supplier Quality Assurance Manual (“SQAM”). Application of SQAM shall be negotiated in good faith between the Parties and agreed to in one or more supplemental documents. Such supplemental documents shall address such matters as the Parties shall mutually agree upon, but shall at a minimum address sub-supplier management and process change requests.

## 8. LICENSE GRANTS, INTELLECTUAL PROPERTY AND CONFIDENTIALITY

8.1 License to Toyota. Subject to the terms and conditions of this Agreement, Tesla hereby grants Toyota a limited, worldwide, non-exclusive, royalty-free, fully paid-up, non-transferable, non sub-licensable right and license to use Tesla Technology and all Intellectual Property Rights therein for the purposes of Toyota performing its obligations under this Agreement, and exercising its rights under this Agreement.

8.2 License to Tesla. Subject to the terms and conditions of this Agreement, Toyota hereby grants Tesla a limited, worldwide, non-exclusive, royalty-free, fully paid-up, non-transferable, non sub-licensable right and license to use Toyota Technology and all Intellectual Property Rights therein for the purposes of Tesla performing its obligations under this Agreement, and exercising its rights under this Agreement.

8.3 Intellectual Property Rights. All rights and obligations related to Technology and Intellectual Property Rights under this Agreement shall be the same as the rights and obligations related to Technology and Intellectual Property Rights set forth in the Phase 1 Agreement.

8.4 Confidentiality. All rights and obligations related to Confidential Information under this Agreement shall be the same as the rights and obligations related to Confidential Information set forth in the Phase 1 Agreement.

## 9. COMPENSATION

### 9.1 Price.

9.1.1 Initial Price. The price to be paid for the Production Parts (the “**Toyota Price**”) shall be [\*\*\*]. The total price of one hundred ten million, five hundred thousand dollars (\$110,500,000) shall include sales of Production Parts and Production Testing Equipment as set forth in section 3.2 and service support to be provided by Tesla as set forth in this Agreement. The cost of additional quantities of Production Testing Equipment, as well as EV Systems Start-Up Services shall be separately agreed upon by the Parties. It is understood and agreed that the Toyota Price shall actually be allocated among the Products and payable only on a piece price basis as Production Parts are ordered, received and accepted. Such allocation shall be separately agreed to by the Parties in writing.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

9.1.2 Adjustments to Price. The price of one hundred ten million, five hundred thousand dollars (\$110,500,000) for the Production Parts as outlined in section 9.1.1 is based on [\*\*\*]. In addition to the potential volume adjustments as set forth in Section 4.8, Toyota may, at its discretion, reduce the total number of RAV4 EVs for which Production Parts are purchased. In such event, Tesla and Toyota shall engage in good faith negotiations to determine the appropriateness and amount of additional compensation to Tesla to compensate it for any costs incurred by it in connection with this Agreement for which Tesla is not otherwise compensated due to such volume reduction. However, if such volume reduction is due to Tesla's failure to comply with the terms of this Agreement, Tesla shall not be entitled to additional compensation. In addition to the foregoing provision, and as part of the ongoing, ordinary course of business between the Parties, the quantity and Toyota Price may be adjusted prospectively from time to time, either higher or lower, all as evidenced by one or more Contract Documents agreed upon by the Parties. For avoidance of doubt, Toyota will not pay any fees for use of Tesla Technology under this Agreement and Tesla will not pay any fees for use of the Toyota Technology under this Agreement.

9.2 Timing of the Applicable Price. The effective date for the start of any Toyota Price, and the duration of the Toyota Price, shall be consistent with section 9.1 and as set forth in the applicable Contract Document, but in no event shall any price adjustments apply to Products already delivered by Tesla. Any applicable price adjustments are effective only for such time as is stated in such Contract Document. Price review will occur at times and according to procedures agreed upon by the Parties.

9.3 Complete Price for Products. Tesla shall sell each Product to Toyota, in such quantities as may be ordered by Toyota during the Term and consistent with the provisions of section 9.1, at the unit price set forth above or in the applicable Contract Document. The specified price shall include any and all costs for packaging and labeling for the Product (including battery shipping containers that comply with Department of Transportation regulations), use, gross receipts, and/or other taxes, and any costs or expenses incurred by Tesla, except those costs or expenses not included above or set forth in section 9.6, in connection with the performance of its obligations under this Agreement.

9.4 Payment. Payment by Toyota for accounts payables owed to Tesla ("**Tesla Payables**") arising from conforming Products and Services duly accepted by Toyota pursuant to the terms of this Agreement ("**Accepted Products**") shall be pursuant to such processes, procedures and payment systems as mutually agreed upon by the Parties (the "**Payment Procedures**"). Tesla agrees to: (i) invoice Toyota for Products solely in strict conformity with the applicable Payment Procedures (a "**Conforming Invoice**"); and (ii) accept payment for such Accepted Products at the times and in the amounts determined by the applicable Payment Procedures.

9.5 Payment Terms. Except as otherwise agreed to by the Parties in writing, Toyota shall pay Tesla [\*\*\*]. All payments shall be made in U.S. funds. Toyota agrees that payment shall be made for Products delivered to its carrier, notwithstanding any subsequent rejection following receipt at a Toyota facility as set forth in Section 12.1. In the event of Rejected Products as defined in Section 12.1, the cost for such Rejected Products shall be reconciled between the parties in connection with subsequent shipment of Products.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

9.6 Taxes. Toyota shall pay all applicable sales, excise, value-added, taxes, and/or duties that are incurred in connection with the purchase of Products under this Agreement, except any income tax imposed on Tesla in connection with its sales under this Agreement.

## 10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

10.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants that: (i) it has the right to enter this Agreement, is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation; (ii) it has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (iii) it has by all necessary corporate action duly and validly authorized the execution and delivery of this Agreement and the performance of its obligations hereunder; and (iv) this Agreement is the valid and legally binding obligation of each Party in accordance with its terms.

10.2 Tesla Warranties. Tesla represents, warrants and covenants that: (i) it shall transfer good title to all Tesla Products delivered hereunder, free and clear of all liens and encumbrances; (ii) Tesla shall comply with commercially reasonable manufacturing and supply practices in performing the Services; and for the Warranty Period (a) all Tesla Products delivered and Services provided hereunder shall comply with all applicable Specifications; (b) all Tesla Products delivered and Services provided hereunder shall be free from any defects in design, workmanship or materials, shall be produced, packaged, stored and shipped in accordance with commercially reasonable manufacturing practices and, in the case of Tesla Products that are software or firmware, are free of viruses or malware as provided by Tesla, including updates, upgrades and modifications as provided by Tesla; (iii) the manufacture, distribution and use of all Tesla Products and Services provided shall not infringe or otherwise misappropriate any third party Intellectual Property Rights; and (iv) it shall perform all Services in a professional and workmanlike manner in accordance with the terms and conditions of this Agreement.

10.3 Tesla Responsibility for Product Design. Tesla and Toyota acknowledge and agree that: (i) the Specifications are intended to be general specifications only and are not intended to provide a complete description of all specifications and requirements for the Tesla Products and Services; (ii) Toyota is relying on Tesla's design, engineering and manufacturing experience to design and manufacture Tesla Products and provide the Services so as to meet the high quality expectations of Toyota; and (iii) Tesla is relying on Toyota's design, engineering and manufacturing expertise and experience to ensure overall vehicle packaging, crash and safety performance, and thermal system and other vehicle integration dependencies to ensure successful Product integration into the completed RAV4 EV.

### 10.4 Compliance With Law.

10.4.1 Tesla represents, warrants and covenants that all Tesla Products supplied and Services provided under this Agreement shall, at the time of their shipment or provisions, comply with all applicable federal, state and local laws, rules and regulations, including, without limitation, environmental, safety and emission laws, rules and regulations, the National Traffic and Motor Vehicle Safety Act, Federal Motor Vehicle Safety Standards, the Consumer Product Safety Act, the Toxic Substances Control Act, or any other federal or state safety or equipment laws, rules or regulations.

10.4.2 Prior to shipment of any Tesla Products, Tesla shall provide Toyota, in compliance with all applicable laws, with: (i) any and all Material Safety Data Sheet ("MSDS") that are related to the Products; (ii) such other disclosures and/or documents where required by applicable law; and (iii) such other documentation, including without limitation, chemical abstract service numbers, as Toyota may request from time to time that is prepared pursuant to environmental or similar requirements and procedures of Toyota (the "**Environmental Reports**"). Tesla agrees to promptly furnish to Toyota any modifications, amendments or supplements to the Environmental Reports. Further, Tesla agrees to promptly inform Toyota of any changes in material or ingredients in Tesla Products, and to promptly furnish Toyota with updated or new Environmental Reports relating to the Tesla Products.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

10.4.3 Tesla hereby represents, warrants and covenants that at the time such information is provided to Toyota, all information provided to Toyota regarding Tesla Product composition (including, without limitation, chemical composition up to the level of a typical MSDS) is accurate with respect to each shipment and/or delivery under this Agreement. Tesla will update any information supplied to Toyota regarding Tesla Product composition immediately: (i) at any time such composition changes, which affects form, fit or function. Further, if requested by Toyota from time to time, Tesla shall provide any other reasonable additional information regarding the Product as to support any export of the Tesla Product outside the continental U.S.

10.5 Breach of Warranty; Limitations of Warranty. The warranties set forth in this Agreement shall apply to all Tesla Products delivered to and/or purchased by Toyota and Services provided pursuant to this Agreement. Any Tesla Products delivered and/or sold and Services provided which fail to conform to the warranties under this Agreement (pursuant to the processes set forth in Exhibit J and elsewhere in this Agreement), shall be deemed defective, in addition to those other conditions described in Section 11.4 below. Tesla shall accept responsibility, as provided in this Agreement, for all defective Tesla Products and Services, provided that Tesla shall have no warranty obligation to Toyota or to any third party for (i) damage to the Tesla Products or vehicle caused by normal wear or deterioration of any part, (ii) any item concerning the vehicle's general appearance that is not due to a defect in material or workmanship, (iii) expendable maintenance items when replaced due to normal wear or customer abuse (iv) Tesla Products that have been subject to misuse, abuse, improper maintenance, racing, accident, fire, explosion, chemical corrosion, collision, objects striking the vehicle, theft, vandalism, riot, earthquake, windstorm, lightning, hail, flood, deep water, or the like, but only to the extent that any of the foregoing are the cause of the warranty claim; (v) insufficient, inappropriate or lack of use by Toyota or its dealers of Tesla's diagnostic tools or any unauthorized repair conducted by any party other than Toyota or Tesla, which causes damage to the Tesla Products; (vi) failure for Toyota to consult Tesla during the warranty diagnosis process consistent with the provisions set forth in Section 11.1 of this Agreement; (vii) alteration or modification of any Products or the installation of fluids, parts or accessories not authorized by Tesla, (viii) failure of Toyota to supply sufficient vehicle log information and otherwise comply with the mutually agreed upon Return Material Authorization process set forth in Exhibit K; (ix) damage caused by improper towing of the vehicle, or (x) damage to any Products caused by components not manufactured by Tesla; (xi) failure of Toyota to store and maintain the Powertrain Battery pursuant to instructions to be set forth in a separate agreement in writing to be negotiated by the Parties in good faith ("Battery Instructions").

10.6 Permits; Equipment; Performance in Compliance with Laws. Tesla shall obtain all permits, consents, licenses, equipment, software, systems and supplies as necessary and/or appropriate to perform under this Agreement, at Tesla's sole cost, except as otherwise specifically agreed in writing by the parties hereto. In addition, in its performance hereunder, Tesla shall comply with: (i) any applicable regulations governing repackaging, handling, packaging, labeling, storing and shipping; (ii) the export control regulations of the United States; and (iii) the U.S. Foreign Corrupt Practices Act. Without limiting the foregoing, Tesla shall not pay, offer, give or promise to pay, nor authorize the payment of, any monies or other things of value, directly or indirectly, to any former or current officer or employee of, or any person acting in an official capacity for, any government, public international organization, or any department, agency or instrumentality thereof (including, without limitation, a government-owned commercial enterprise) or any former or current official of any political party or any candidate for political office on behalf of or for the benefit of Tesla or Toyota if such payment(s) could be construed as violating the applicable laws of any jurisdiction or any laws applicable to Tesla or Toyota or any of the Tesla Products. "Directly or indirectly" shall be deemed to include, without limitation, receipt or the intention to provide something of value to a relative, friend and/or associate of any of the foregoing officers, employees, persons, officials and/or candidates identified above.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

10.7 Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION, WARRANTY, OR CONDITION, EXPRESS IMPLIED, STATUTORY OR OTHERWISE AS TO ANY MATTER WHATSOEVER RELATING TO THE PRODUCTS OR SERVICES. EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR FITNESS FOR A PARTICULAR PURPOSE, CONDITIONS OF MERCHANTABILITY. IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES, SUCCESSORS OR ASSIGNS BE LIABLE TO ANY PARTY FOR ANY PUNITIVE OR CONSEQUENTIAL DAMAGES ALLEGED TO HAVE OCCURRED AS THE RESULT OF ACTIONS OR FAILURES TO ACT IN ACCORDANCE WITH THIS AGREEMENT.

## 11. WARRANTY FOR DEFECTS FOLLOWING SALE OR LEASE

11.1 Warranty Claim. Tesla shall repair or replace defective Tesla Products (as defined in Section 11.4 below), as provided for in this Section and on Exhibits J and K, supplied by Tesla under this Agreement, provided the Tesla Product defect appears within the time limits specified therein (hereinafter "**Warranty Claims**"). Toyota shall provide Tesla with a monthly sales report sufficient to enable Tesla to understand which vehicles have been sold on what date.

11.2 Period of Warranty. Except as otherwise required by applicable law, Tesla shall be responsible pursuant to the terms set forth herein for Tesla Product and Service defects appearing within the following time limits (each a "**Warranty Period**") set forth in Exhibit J.

11.3 Warranty Cost Apportionment. Tesla's responsibility for costs associated with Warranty Claims shall be as set forth in Exhibit J. The Parties intend to allocate the actual cost of any Warranty Claim in conformity with the terms of this provision. In the event of disagreement, the Parties shall resolve the dispute in accordance with the provisions of Section 20.18.1.

### 11.4 Definition of Defect.

11.4.1 Products and Services Other than Powertrain Battery. For purposes of this Agreement, a Tesla Product or Service shall be deemed "defective" if: (i) the Tesla Product or Service fail to comply with the representations and warranties set forth in Sections 10 and 11 as determined by the Parties and in accordance with Section 20.18; or (ii) any court, governmental agency or arbitration forum determines that a Product is defective or a RAV4 EV is defective and such defect is directly related to a Tesla Product.

\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

11.4.2 Powertrain Battery. A Powertrain Battery shall be deemed “defective” if, within the Powertrain Battery Warranty, the Powertrain Battery Capacity, as of the date of a consumer claim, is less than the percentage which corresponds to that metric as illustrated on the chart depicted on Exhibit J.

11.5 Cooperation is Not a Limitation of Remedies. It is the intention of Toyota to work with Tesla in the event of any nonconformity or Warranty Claims, but such intention shall not be deemed a limitation of its remedies. If Toyota obtains replacement Products, such action shall not be an election of remedies, nor shall it in any way limit the rights and remedies of Toyota under this Agreement.

## 12. REJECTED OR NON-CONFORMING PRODUCTS

12.1 Reports. Toyota or, in the case of Service Parts, its dealer or Authorized Distributor, as applicable, shall promptly report any alleged damaged or defective Tesla Products (“**Rejected Products**”) when discovered, but in any event, no later than three (3) days from receipt. Tesla Products not rejected by Toyota or its dealer or Authorized Distributor, as applicable, within such three (3) day period shall be deemed Accepted Products under Section 9.4. Final determination of actual damage or defective Tesla Product may only be made after Tesla has been consulted and provided a reasonable opportunity to verify the damage or defect. Toyota or its dealer or Authorized Distributor, as applicable, shall promptly report any short or mispacked Tesla Products (“**Short Products**”) upon receipt. In addition, Toyota shall provide Tesla, through the Toyota Supplier Network, periodic reports listing all outstanding claims for Rejected Products and Short Products, all in accordance with Toyota’s policies and procedures. The failure of Toyota, its dealer or its Authorized Distributor, as applicable, to reject Products as set forth in this subsection shall not waive Toyota’s rights to claim that a Product is defective as to defects not reasonably discoverable upon initial inspection and to exercise its rights and remedies under this Agreement.

12.2 Rejected Products. Toyota shall have one or more of the following options with respect to Rejected Products:

12.2.1 Repair. If Toyota determines that it is necessary to repair any Rejected Products, which shall include, without limitation, performing such additional work (including the cost of any materials) as is necessary to make such Rejected Products fully conforming (the “**Remedial Work**”), then Toyota may elect to (i) perform the Remedial Work itself, (ii) have a third party perform the Remedial Work or (iii) have Tesla perform the Remedial Work. Provided that Tesla has given prior written approval in the case of (i) or (ii), or, in the case of (iii), the reasonable cost of such Remedial Work shall be borne by Tesla.

12.2.2 Replacement. If repair in accordance with section 12.2.1 above is not feasible or practicable, Toyota may request replacement of Rejected Products and seek replacement Tesla Products. The Parties shall discuss in good faith the need for replacement in lieu of repair. The reasonable cost of such replacements shall be borne by Tesla.

12.3 Short Products. In the case of any Short Products that are the result of any Tesla act or omission, Tesla shall, if so requested by Toyota, and at its cost, use commercially reasonable efforts to ship to the destination designated by Toyota the additional Products needed to fully complete the applicable Toyota requirements. Under no circumstances will Tesla be responsible for the replacement or costs of Short Products resulting from any act, omission or non-performance of Toyota, Toyota affiliates or carriers.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

12.4 Maintenance of Product Flow. At Toyota's request and with reasonable notice and at no cost to Toyota, Tesla will agree to provide appropriate support reasonably requested by Toyota to address the impact of any Rejected Products or Short Products. Such support will be determined by the Parties and may include sorting Tesla Products, reworking Tesla Products or disposing of Tesla Products (the "**Support Work**").

12.5 Reservation of Rights.

12.5.1 Receipt by Toyota of shipments containing Rejected Products or Short Products shall not waive Toyota's rights under this Section 12 or any other Section of this Agreement with respect to such Rejected Products or Short Products.

12.5.2 Replacement or repair of Rejected Products and replacement of Short Products pursuant to this Section shall not waive Toyota's rights under this Agreement, including, without limitation, Toyota's right to terminate this Agreement under Section 16.

**13. PACKAGING AND LABELING**

13.1 Tesla Responsibility. Tesla shall be responsible for all packaging and labeling of Tesla Product(s) supplied pursuant to this Agreement (collectively, the "**Packaging**"). The Packaging shall be the property of Tesla unless otherwise agreed to by Toyota.

13.2 Design and Use. The design, specification and use of all Packaging shall comply with all applicable laws, including, without limitation laws regarding transportation, disclosure and labeling of hazardous materials and Products content disclosures for purchasers, including, without limitation, wholesale and retail purchasers. All packaging and labeling shall also conform to the general packaging requirements established by Toyota from time to time and any Product-specific requirements noted in the Guidelines for completing the Toyota Packaging and Shipping Data Form and shall be subject to Toyota's prior written approval. The Packaging and Shipping Data Form must be completed and returned with the Request for Quotation Form to Toyota for approval. Tesla shall use its best efforts to package products in such a way to provide the maximum amount of protection with consideration given to Product size, cost, weight and order quantities.

13.3 Toyota Changes. Upon reasonable notice, Toyota may request changes in packaging, packing, shipping and labeling specifications for any Product. Upon receiving Toyota's request, the Parties shall agree upon whether changes to packaging are warranted and make appropriate adjustments to the cost, if any, to be borne by Toyota as the result of the requested change. Tesla shall implement any agreed upon changes to packaging, packing, shipping, and labeling specifications agreed upon by the Parties within ninety (90) days of that agreement, unless such request is rescinded by Toyota prior to the expiration of that ninety (90) day time period. Notwithstanding any change requested by Toyota in packaging, packing, shipping and/or labeling specifications under this Section 13.3, such changed packaging, shipping and labeling specifications must continue to meet the requirements of Section 13.2 above. In addition, if changes in packaging, packing, shipping and/or labeling specifications must be implemented sooner than the time deadlines set forth in this Section 13.2 (e.g., due to safety concerns), Tesla shall implement such changes as soon as commercially reasonable following agreement by the Parties.

13.4 Tesla Suggested Changes. Tesla may, on its own initiative, offer Toyota suggestions or requests to change packaging specification with advance notification to Toyota. Toyota shall not unreasonably withhold approval of such changes. All changes proposed or implemented by Tesla must comply with the provisions of this Section 13, including, without limitation, Section 13.2.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

#### 14. QUALITY CONTROL

14.1 Quality Requirements. All Tesla Products sold to Toyota and Services provided under this Agreement shall be manufactured and provided in accordance with Toyota's quality control procedures and requirements contained in SQAM (as supplemented in the manner set forth in Section 7.1) the TIMT and, if applicable to the Tesla Products as set forth in Section 11, the Supplier Warranty Cost Sharing ("SWCS") manual (collectively, the "**Quality Requirements**"). Tesla shall, in accordance with commercially reasonable practices, provide, maintain and enforce all measures appropriate to secure the quality of Tesla Products and the manufacturing processes thereof, including, without limitation, quality control standards, inspection standards and specifications.

14.2 Evidence of Tesla's Quality Assurance; Testing. Upon Toyota's reasonable request and in accordance with SQAM (as supplemented in the manner set forth in Section 7.1), Tesla shall deliver to Toyota data, records and other materials to evidence Tesla's testing, inspection and analysis of field quality data as provided by Toyota and such other quality assurance actions as will validate compliance with all Quality Requirements. Toyota may, in accordance with the provisions of Section 4.5, have access to Tesla's relevant premises to (i) inspect the Tesla Products and/or work in process with respect to the Products, and (ii) conduct quality control measures and tests. Without cost to Toyota, Tesla shall provide facilities and assistance for Toyota's inspections, tests and measures. Toyota shall be entitled to audit and verify compliance with the Quality Requirements upon reasonable notice. Toyota shall not be liable for any reduction in value of samples used, nor shall any Products rejected be submitted to Toyota.

14.3 Pre-delivery Inspection. Tesla shall be responsible for the quality control of the Tesla Products it supplies to Toyota pursuant to this Agreement, including, without limitation, adequate inspection of Tesla Products prior to delivery.

14.4 Notice of Defective Tesla Products or Services. Tesla must give Toyota notice of any suspect shipment of non-conforming Tesla Products (including, without limitation, boxes and master cartons) or Service in accordance with the provisions of SQAM. Such notice shall include an immediate notice by facsimile, receipt of which shall be promptly confirmed via telephone. Such initial notice must include Tesla's temporary countermeasure(s). Tesla shall thereafter have fifteen (15) calendar days to submit a Long Term Countermeasure Reply Form. Upon receipt of initial notice and any additional information as required by SQAM, Toyota may, after consultation with Tesla, as to any defective Tesla Product or Service, (x) accept it; (y) allow Tesla to correct the Tesla Product or Service at its sole cost; or (z) order Tesla to scrap the Tesla Product, if the defect is in a Tesla Product.

14.5 Tesla Testing. Upon receipt of a request by Toyota and as agreed by the Parties or as required by SQAM, Tesla shall use commercially reasonable efforts to conduct requested engineering and quality control tests of Tesla Products manufactured pursuant to this Agreement, and shall provide Toyota with the results of those tests.

\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

## 15. INDEMNIFICATION AND INSURANCE

15.1 Indemnity by Tesla. Subject to any limitations on Tesla's responsibility for warranty claims under Sections 10 and 11, Tesla shall defend, indemnify and hold harmless Toyota, its shareholders, affiliates (including, without limitation, parent and subsidiary companies), distributors, dealers and customers, including Authorized Distributors, and each of their respective directors, officers, employees, representatives and agents, from and against any and all liabilities, losses, claims, actions, suits, administrative hearings, proceedings, government investigations or studies, damages, remedies, fines, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees, arising out of, based on and/or resulting from: (i) any allegation that any Tesla Products manufactured or supplied by Tesla or Services provided pursuant to this Agreement are defective, that such Tesla Products or Services are not as had been represented in writing to Toyota by Tesla or that such Tesla Product or Service are not in compliance with applicable federal, state or local laws, rules or regulations, including, without limitation, environmental laws, rules or regulations, the National Traffic and Motor Vehicle Safety Act, Federal Motor Vehicle Safety Standards, the Consumer Product Safety Act, the Toxic Substances Control Act, or any other federal, state or local safety or equipment laws, rules or regulations, except such provision shall not apply to any Product designed or manufactured by Tesla to specifications supplied by Toyota, and/or (ii) any damages and reasonable fees or costs awarded or agreed to in the final disposition or settlement of Product Liability Claims based upon alleged defects in the design or manufacture of the Tesla Products. Toyota shall give Tesla prompt written notice of any such claim, action, suit or proceeding and Tesla shall promptly assume and diligently conduct the defense thereof. Toyota shall have the right, but not the obligation, to participate jointly with Tesla in its defense, settlement or other disposition of any indemnity claim hereunder, and Toyota shall have the right to approve the legal counsel retained by Tesla, and approve any and all settlements and offers of settlement prior to Tesla entering into same (which approvals, in each case, shall not be unreasonably withheld). Tesla shall obtain the written consent of Toyota (which consent shall not be unreasonably withheld) prior to ceasing to defend, settling or otherwise disposing of any indemnity claim.

15.2 Co-Defense of Product Liability Claims. Notwithstanding the terms of Section 15.1, Toyota and Tesla agree that TMS and Tesla shall co-defend Product Liability Claims against the Parties based upon the following principles:

15.2.1 Each Party shall give the other Party prompt written notice of any threatened or pending Product Liability Claim against the notifying Party. If after internal investigation by each Party of the basis for the Product Liability Claim either of the Parties believes that such claim is or may be based in whole or in part on an alleged defect in the design or manufacture of any of the Tesla Products, each Party shall select and retain, at its sole expense, counsel to defend such Party against the Product Liability Claim, and shall instruct such counsel to cooperate in the defense of such claim. The Parties acknowledge and agree that the objective of such cooperation shall be to maximize the likelihood of a finding of no liability against either Party, and if a finding of liability is likely, to defend and/or settle the plaintiff's Product Liability Claim with the least damage to either Party. In furtherance of this objective, during the period that the Parties are investigating and collecting information in furtherance of the defense of a Product Liability Claim, each Party also agrees to use reasonable efforts to cooperate in negotiating terms under which the Parties and their selected counsel will share information in furtherance of the Parties' common interests in such a manner as to protect the continuing confidentiality of such information (whether under the attorney-client communication privilege, the attorney work-product doctrine, or any other applicable privilege or doctrine) against disclosure to persons other than the Parties.

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

15.2.2 Notwithstanding the foregoing, nothing in this Section 15.2 is intended to reapportion liability between Tesla and Toyota with respect to Tesla's responsibility for the Tesla Products, or Toyota's responsibility for the RAV4 EVs under this Agreement. Following final disposition or settlement of any Product Liability Claim co-defended pursuant to this Section, if either Party believes that some or all liability for the damages awarded or amounts paid in settlement of such claim to the Plaintiffs was improperly apportioned by the court, jury or in the settlement process to one or the other Party, the Parties shall mutually agree upon the appropriate apportionment of such liability in accordance with the procedures set forth in Section 20.18 of this Agreement.

15.3 Recall/Field Action.

15.3.1 Notice to Governmental Authorities; Right to Initiate Recall/Field Actions. Toyota and Tesla independently reserve the right to comply with legal obligations mandating notice to appropriate governmental authorities regarding Products supplied pursuant to this Agreement and vehicles containing the Products when either Party determines, or any government agency alleges, such Products or vehicles contain a defect related to safety; and/or which fail to comply with all applicable laws, rules or regulations, including, without limitation, safety, environmental and emission laws, rules and regulations. Notwithstanding the foregoing, Toyota has the exclusive right to initiate a recall/Field Action of Toyota nameplate vehicles containing Products.

15.3.2 Requirement to Consult. Notwithstanding the provisions of 15.3.1, each Party agrees to use commercially reasonable efforts to consult with the other Party regarding any potential noncompliance with any applicable laws, rules or regulations, or possible safety-related defect related to the Products as soon as it becomes aware of a potential noncompliance or possible safety-related defect arises. Such consultation shall include, but is not limited to, root cause analysis, determination of safety impacts (if any), draft notifications and/or recall/Field Action remedy plans and other written materials intended for release. Notwithstanding the foregoing, Tesla shall in its sole discretion determine the timing and content of any notice to any applicable government agencies with respect to Products supplied to more than a single vehicle manufacturer and Toyota shall in its sole discretion determine the timing and content of any notice to any applicable government agency with respect to Toyota nameplate vehicles. All communications with government agencies involving any potential noncompliance or possible defects related to the Products shall be shared with the other Party.

15.3.3 Reimbursement of Expenses of Recall/Field Actions. Provided Toyota gives Tesla advance notice of any such recall/Field Action in accordance with section 15.3.2, and such recall/Field Action involves a defect or defects in Tesla Products that are the result of an act or omission by Tesla, Tesla shall reimburse Toyota and its Authorized Distributors for Tesla's share of all recall/Field Action costs as referenced on Exhibit J, based on Tesla's technical responsibility.

15.4 Insurance.

15.4.1 Commercial General Liability and Other Insurance. At all times throughout the Term, Tesla shall procure and maintain, at its sole cost and expense, the following insurance:

15.4.1.1 A policy or policies of commercial general liability insurance with minimum coverage of at least [\*\*\*] combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage.

15.4.1.2 A policy or policies of employer's liability insurance with minimum coverage of at least [\*\*\*]. Tesla shall also comply with all applicable workers' compensation and/or other laws that may accrue in favor of any Tesla Personnel in all locales where Tesla Personnel perform(s) hereunder.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

15.4.1.3 A policy or policies of automobile liability insurance on all owned, non-owned and/or hired vehicles with minimum coverage of at least [\*\*\*] combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle.

15.4.2 Insurance Certificates. All insurance coverage required under the terms of this Agreement shall be procured from insurers with A.M. Best Company ratings of at least A- and with financial size categories of at least Class VII. All insurance shall be occurrence-based; provided, however, if Tesla is unable to obtain occurrence-based coverage, then the insurance shall be claims-made, and the insurance policy shall extend not less than ten (10) years after the termination of this Agreement or such longer period as required by applicable law. Tesla shall furnish Toyota, within five (5) Business Days of any Toyota request, a certificate or certificates from Tesla's insurance carrier(s) evidencing such insurance and including an endorsement naming Toyota and its affiliates (including, without limitation, its parent and subsidiary companies) as additional insured. To the extent applicable law requires greater and/or additional coverage, Tesla shall comply with such requirements. Toyota's approval of any of Tesla's insurance policies does not relieve or limit any of Tesla's obligations under this Agreement, including, without limitation, obligations or liabilities under Section 15.4.1 or the other indemnity or defense obligations hereunder, or for claims outside the scope of the coverage, excluded by, or which exceed the required insurance limits of such policy(ies). The insurance required under this Section 15.4 shall be in addition to, separate from, and not limited by any obligations under Section 15.1 or the other indemnity or defense obligations hereunder. Tesla or its insurance carrier shall provide Toyota with prompt written notice in the event that any insurance required to be maintained hereunder has either expired without renewal, been canceled or had the coverage thereunder reduced.

## 16. TERM AND TERMINATION

16.1 Term of Agreement. Unless otherwise terminated as provided herein, this Agreement shall be effective upon the Effective Date and shall remain in force until December 31, 2012 (the "**Initial Term**"). This Agreement shall be renewed automatically for additional successive one year periods (each, a "**Renewal Term**"), unless a Party gives notice of non-renewal to the other at least thirty (30) days before the expiration of the Initial Term or then-current Renewal Term (the Initial Term and all Renewal Terms, collectively, the "**Term**").

16.2 Termination for Cause. This Agreement may be terminated by a Party for cause immediately upon the occurrence of and in accordance with the following:

16.2.1 Insolvency Event. Either Party may terminate this Agreement by delivering written notice to the other Party upon the occurrence of any of the following events: (i) a receiver is appointed for the other Party or its property; (ii) the other Party makes a general assignment for the benefit of its creditors; (iii) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) calendar days; or (iv) the other Party is liquidated or dissolved.

16.2.2 Default. Either Party may terminate this Agreement effective upon written notice to the other Party if the other Party violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within thirty (30) calendar days after written notice thereof from the non-defaulting Party stating its intention to terminate this Agreement by reason thereof.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

16.3 Survival of Rights and Obligations Upon Termination. The expiration or termination of this Agreement shall not affect Tesla's obligations or representations and warranties under this Agreement with respect to Products delivered or ordered prior to such expiration or termination, or Products ordered pursuant to Section 3.4 above. Without limiting the foregoing, Sections 1, 2.10, 3.1, 3.4, 3.5, 4.2, 4.7, 4.8.2, 5.2, 6, 8.3, 8.4, 10, 11, 12, 15, 16.3, 17.6, 18.1.8, 18.2, 18.12.4.4, and 20.3, 20.9, 20.12, 20.13, 20.15, 20.16, 20.17, 20.18, 20.19, 20.20, 20.21, 20.22 shall survive termination or expiration of this Agreement.

## 17. TOYOTA SUPPLIER NETWORK.

17.1 Generally. Designated aspects of the purchasing relationship between Tesla and Toyota will be controlled by applicable provisions of the Toyota Supplier Network including: (i) the TEMA World Wide Automotive Real Time Purchasing System ("WARP"); (ii) the Toyota Supplier Interface (the "Supplier Interface") to WARP; (iii) *toyotasupplier.com*; and (iv) such other such processes, procedures and electronic systems as are designated by Toyota in its discretion (collectively, the "Toyota Supplier Network"). Procedures, terms and conditions for the Toyota Supplier Network ("TSN Procedures") will be set forth in one or more Contract Documents, and may be revised and updated from time to time by Toyota all in its discretion. To the extent any conflict arises between the provisions of the TSN Procedures and this Agreement the terms of this Agreement shall control.

17.2 Acceptance. By using the Toyota Supplier Network, Tesla agrees to and accepts the TSN Procedures, and agrees to be bound by all such TSN Procedures unless otherwise set forth in Contract Documents or pursuant to this Agreement. Toyota reserves the right at any time to add, delete or modify the functionality of the Toyota Supplier Network and/or the TSN Procedures upon notice, delivered by e-mail, or by an on-screen alert on the Toyota Supplier Network site. Toyota also reserves the right to terminate Tesla's enrollment in, and use of, the Toyota Supplier Network at any time.

17.3 Internet Accessibility; Third Party Software Providers. The Toyota Supplier Network is made available to Tesla via a public Internet connection using commercially available third-party web browsers and Internet utility software from various unaffiliated software providers. Toyota does not warrant the performance of, and bears no responsibility for, Tesla's use of the Internet or any third party web browser or related software. Further, Tesla is solely responsible for its subscription to and connection with the Internet.

17.4 Tesla Content. Information, data, text and other materials that Tesla posts or transmits to the Toyota Supplier Network site or supplies to Toyota are referred to as "Tesla Content." By posting or transmitting Tesla Content to the Toyota Supplier Network site, Tesla agrees that it is solely responsible for the origination, accuracy, completeness, ownership, publication and dissemination of Tesla Content. Tesla agrees that any Tesla Content will not contain software viruses or any other computer code, files or programs designed to or which may interrupt, destroy or limit the functionality of any computer software or hardware, any other telecommunications equipment or any other part of the Toyota Supplier Network.

### 17.5 Electronic Forms.

17.5.1 In connection with this Agreement and Toyota Supplier Network, Toyota may use electronic purchase orders and other electronic forms (collectively, the "Electronic Forms") to supplement written documents (collectively, "Toyota Written Forms") used with this Agreement. From time to time, Electronic Forms will supplement Toyota Written Forms, or Electronic Forms may replace Toyota Written Forms entirely. With reasonable notice to Tesla, Toyota may set policies and procedures, from time to time, for the transition to, and implementation of, Electronic Forms, and such policies and procedures will be posted on the Toyota Supplier Network. All policies and procedures will become effective as of the date established by Toyota, but in no circumstances will such policies and procedures become effective until prior written notice is provided to Tesla at least three (3) Business Days in advance of such change.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

17.5.2 In the event Toyota uses Electronic Forms, all data and other information required for or associated with Electronic Forms will be entered, stored and transmitted electronically, both within the computer systems maintained by Toyota for the Toyota Supplier Network, and within computer systems maintained by Tesla. In addition, both Toyota and Tesla may use the same or different software to prepare, transmit, store and produce written copies of the applicable Electronic Forms. It is also understood that in the transmission of Electronic Forms content from Toyota to Tesla, and in the storage and retrieval of such content using the same or different software, errors, miscommunications and other mistakes can occur for reasons solely related to the transmission and interfaces used to read the Electronic Forms content, or otherwise. Notwithstanding the foregoing, the following procedures shall apply to Electronic Forms.

17.5.3 Electronic Forms content as maintained, stored or reproduced by Toyota from the Toyota Supplier Network shall be the controlling form and record of such content.

17.5.4 In the event of inconsistencies, conflicts, ambiguities or other disagreements between any Electronic Forms content as maintained by Toyota and the same or similar Electronic Forms content as maintained by Tesla, the Parties engage in good faith discussions to determine which version shall control.

17.5.5 Any paper or printed copies of Electronic Forms content generated by Tesla from software, facsimile or other electronic means (collectively, "**Tesla Written Records**") shall be for Tesla convenience and/or internal records only, and shall not replace or modify the provisions or terms of any Electronic Forms content as maintained by Toyota.

17.5.6 Toyota reserves the right to: (i) continue the use of Toyota Written Forms; and/or (ii) prepare, print or otherwise generate from software, by facsimile or other electronic means, written copies of Electronic Forms content (collectively, "**Toyota Written Records**").

#### 17.6 Disclaimer.

17.6.1 THE TOYOTA SUPPLIER NETWORK AND ALL MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY ELECTRONIC FORMS AND SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND. TOYOTA, WITHOUT LIMITING THE FOREGOING, SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO: (i) WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT OF INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE; AND (ii) WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, APPROPRIATENESS, RELIABILITY, TIMELINESS, USEFULNESS, OR OTHERWISE OF THE TOYOTA SUPPLIER NETWORK, ITS CONTENT, ANY ELECTRONIC FORMS OR MATERIALS. IN NO EVENT WILL TOYOTA, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES, SUCCESSORS OR ASSIGNS, BE LIABLE TO ANY PARTY FOR ANY INDIRECT, DIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE), OR ANY OTHER DAMAGES ARISING IN ANY WAY OUT OF THE AVAILABILITY, USE, RELIANCE ON, OR INABILITY TO USE THE TOYOTA SUPPLIER NETWORK, EVEN IF TOYOTA OR ITS REGISTERED AGENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

17.6.2 The Toyota Supplier Network utilizes the Internet to transport data and communications. Toyota will take all necessary and prudent security precautions to safeguard data and communications. Toyota, and any third party working with Toyota to provide services to Tesla, shall not be responsible for any damages caused by: (i) communications line failure, systems failure, and other occurrences beyond their control; (ii) from any unauthorized activity caused by any third party who gains access to Toyota Supplier Network, unless such access is the result of the failure by Toyota to maintain necessary and prudent safeguards to prevent such access; or (iii) other breach of security requirements as a result of any intentional or unintentional conduct, including negligence, by Tesla or its representatives. Toyota will not be responsible for any costs Tesla incurs to connect to the Toyota Supplier Network.

17.7 Binding Agreement; Electronic Acknowledgment. Tesla shall be bound by any use of, affirmation, assent or agreement transmitted through, the Toyota Supplier Network. Tesla further acknowledges that any decision or action to click on an “I agree”, “I consent” or other similarly worded “button” or entry field using a mouse, keystroke or other computer device, shall be deemed and constitute its agreement or consent to such decision or action, and will be legally binding and enforceable and the legal equivalent of the handwritten signature of Tesla.

**18. TOOLING TERMS AND CONDITIONS.** This Section 18 shall apply to any Tesla Products that constitute Tooling. To the extent any conflict arises between Section 18 and other Sections of this Agreement, as to Tooling Section 18 shall control. This Section 18 shall have no application to any Products other than Tooling. For all other purposes, the term Products shall include Tooling.

18.1 Tooling.

18.1.1 Tooling Definition. “**Tooling**” shall mean, collectively, such production-based tooling, jigs, dies, gauges, fixtures, models, molds and/or patterns as are required to manufacture Products already identified to the RAV4 EV in production or for Products of the RAV4 EV which is beyond the prototype stage of engineering or production, and in each case are used exclusively for the production and/or servicing of the RAV4 EV.

18.1.2 Tooling Authorization. “**Tooling Authorization**” shall mean the Contract Documents designated by Toyota which collectively identify the Toyota Tooling to be manufactured by Tesla (or on its behalf) and purchased by Toyota (and which may include quantity, description, and delivery terms). Until such time as Tesla receives the Tooling Authorization for Tooling used exclusively for RAV4 EV production, Tesla has no authority to commence cutting or other work on the Toyota Tooling. Once Tesla receives the Tooling Authorization, Tesla’s commencement of work on the Toyota Tooling shall constitute acceptance of the applicable Contract Documents for such Toyota Tooling.

18.1.3 Tooling Purchase Order. “**Tooling Purchase Order**” shall mean the Contract Documents designated by Toyota which collectively identify the terms of purchase for any Toyota Tooling. In the event there is an inconsistency or conflict between any Tooling Purchase Order and this Agreement, this Agreement shall control.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

18.1.4 Toyota Tooling. “**Toyota Tooling**” shall mean the Tooling which is identified on a Tooling Authorization or Tooling Purchase Order.

18.1.5 Common Tooling. “**Common Tooling**” shall mean the Tooling which is owned by Tesla and used to produce parts for Tesla, Tesla customers and Toyota.

18.1.6 Part Approval. “**Part Approval**” shall be the date and time at which preliminary approval (which may include quantity, description, and delivery terms) of the Toyota Tooling occurs.

18.1.7 Final Approval. “**Final Approval**” shall be the date and time that the Toyota Tooling has been approved for standard production of Products at full production rates.

18.1.8 Property. All Toyota Tooling is solely and exclusively the property of Toyota and when in the possession of Tesla, any Toolmaker, any tier two or other party involved in the operation of the Toyota Tooling or in the possession any other third party shall be deemed a bailment (collectively, other than Tesla, a “**Tooling Third Party**”). Tesla shall prominently mark and identify the Toyota Tooling as property of Toyota by utilizing asset tags or other identifying materials provided to it by Toyota. With the prior written permission of Toyota, Tesla may maintain Toyota Tooling on the premises of a Tooling Third Party, solely as a bailment and otherwise on terms and conditions established by Toyota in the applicable Contract Documents. Toyota Tooling will be insured by Tesla, at its expense, against loss or damage. Tesla, at its expense, shall maintain the Toyota Tooling in good condition, excluding normal wear and tear, and immediately replace any items associated with the Toyota Tooling, which are lost, destroyed or worn out prior to their expected useful life.

18.2 Sale of Toyota Tooling. Tesla is expressly prohibited from selling any Toyota Tooling to a Tooling Third Party or any other third party at any time.

18.3 Other Tooling. Tesla may purchase and own Common Tooling and/or such other Tooling as may be necessary for the production of Products for Toyota (the “**Tesla Tooling**”), all pursuant to this Agreement and as set forth in one or more Contract Documents as mutually agreed upon by the Parties. The Common Tooling and Tesla Tooling shall collectively be referred to herein as “**Other Tooling**”. In the event that any Other Tooling is procured, Toyota shall reimburse Tesla for the reasonable costs of such Other Tooling, pursuant to an adjustment to the piece price for Products manufactured with such Other Tooling or such other Payment Procedures as determined by Tesla. The amount paid for such Other Tooling (the “**SPT Costs**”), and timing of payment, shall be set forth in a separate Contract Document as agreed upon by the Parties. The Other Tooling shall be the property of Tesla.

18.4 Products. The Toyota Tooling may be used to produce trial parts or production quantities of Products for Toyota. All aspects of such production of Products shall be controlled solely by one or more Contract Documents.

18.5 Price and Payment for Tooling.

18.5.1 Price. In establishing the price for the Toyota Tooling (“**Tooling Price**”), the Parties shall agree jointly to evaluate and take into consideration: (i) the costs of comparable Toyota Tooling for past vehicle models (whether produced by Tesla or another party); and (ii) reasonable and necessary variances from any and all quotes provided by Tesla as may be required under the circumstances; provided, however, that the price shall be agreed by the Parties after good faith negotiations and shall be evidenced only by the Tooling Purchase Order.

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

18.5.2 Price Adjustments. Any Tooling Price may be interim (pending completion of engineering, cost analysis and other details concerning actual costs of the Toyota Tooling, and other matters) and may be adjusted by the Parties, either higher or lower, before it becomes a final Tooling Price, all as evidenced by one or more Contract Documents as agreed upon by the Parties. No adjustments to any Tooling Price will be made for increases in Tesla's manufacturing and other costs, including but not limited to, increases in its costs for labor, materials, overhead or other direct, indirect, fixed or variable costs. In the event Required Changes to Toyota Tooling have or will result in a material increase or decrease in the costs of such Toyota Tooling and/or the time for performance, Toyota and Tesla will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any Tooling Price adjustment shall be evidenced by a new or revised Tooling Purchase Order or other Contract Document.

18.5.3 Payment. Payment by Toyota of the Tooling Price (or such amount as is a Tesla Payable; a "**Tooling Payment**") arising from Toyota Tooling duly accepted by Toyota shall be pursuant to such Payment Procedures as are designated by Toyota in its discretion. Payment terms, unless otherwise provided in a Contract Document, shall be as follows. First, 80% of the Tooling Payment shall be paid in accordance with Section 9.5 after Toyota receives both: (i) Tesla's Tooling invoice (a "**Tooling Invoice**") for such amount; and (ii) a copy of the applicable Part Approval. Next, the remaining 20% of the Tooling Payment shall be paid in accordance with Section 9.5 after Toyota receives both: (x) a Tooling Invoice for such 20% (which invoice MAY NOT be submitted until at least one (1) day following SOP for the applicable RAV4 EV; and (y) a second copy of the applicable Part Approval.

18.6 Inspection.

18.6.1 Right to Inspect. Toyota shall have the right to inspect the Toyota Tooling and Other Tooling. In the event the Toyota Tooling is manufactured by a third party vendor (the "**Toolmaker**"), Tesla shall use reasonable efforts to secure consent from the Toolmaker for Toyota to inspect Toolmaker's premises in connection with this Agreement. Payment of a Tooling Invoice shall not be deemed acceptance of any Toyota Tooling, and Toyota Tooling shall be accepted by Toyota only in connection with Part Approval and Final Approval.

18.6.2 Rejected Tooling. At any time prior to Final Approval, if the Toyota Tooling is not producing Products in conformity with the specification or engineering requirements of this Agreement as set forth in Section 10.3, or is otherwise nonconforming, as determined by the Parties (the "**Rejected Tooling**"), either Party may designate such Toyota Tooling as Rejected Tooling. In such event, the provisions of Section 12 of this Agreement shall apply to such Rejected Tooling (as if the Rejected Tooling was a Rejected Product).

18.7 On-Time Completion.

18.7.1 Completion Target Date. Completion of the Toyota Tooling within the designated timeframe (the "**Production Timetable**") shall be as set forth in the Tooling Authorization and/or Part Approval (the "**Completion Target Date**"). For purposes of meeting the Completion Target Date, Sections 4.3 and 4.4 of this Agreement shall apply to both Tesla and any Toolmaker utilized by Tesla.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

18.7.2 Rescheduling. The Production Timetable may only be shortened or extended by the mutual agreement of both Parties. If such rescheduling occurs and results in a shorter Production Timetable, and such shorter production time has or will result in a material increase or decrease in the cost of the Toyota Tooling and/or the time for performance, Toyota and Tesla will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the Parties. Any modification to the Production Timetable and attendant Tooling Price adjustments as necessary shall be evidenced by a new or revised Agreement, Tooling Purchase Order and/or other Contract Documents as necessary.

18.8 Status of Tooling. In the event the Toyota Tooling or Other Tooling is acquired by Tesla from a Toolmaker, Toyota shall have the rights of a third party beneficiary under, and with respect to, any contract or agreement between Tesla and Toolmaker regarding such Tooling ("**Tooling Contract**").

18.9 Encumbrances. Tesla shall not pledge or encumber its interest in any accounts receivable related to or arising from any Toyota Tooling without Toyota's prior written consent. In the event of such consent, any secured party's rights in and to such interest shall at all times be subject and inferior to Toyota's rights including, but not limited to, Toyota's right to cancel any Tooling Purchase Order, other Contract Document and/or the right of Toyota to set-off amounts owed with respect to any Toyota Tooling against claims of Toyota against Tesla. Any security interest in accounts receivable shall also be subject to Toyota's right to: (i) compromise or settle the Tooling Authorization and/or Part Approval, and any other aspect of its relationship to the Toyota Tooling; and (ii) pay to Toolmaker amounts otherwise due Tesla in connection with any independent agreement with Toolmaker or an assumption of the Tooling Contract.

18.10 Disposal of Toyota Tooling. Tesla shall not dispose of any Toyota Tooling except in strict conformity with any Toyota policies and procedures.

18.11 Use; Removal of Toyota Tooling. All Toyota Tooling is to be used exclusively for Toyota's benefit. Upon three (3) Business Days prior notice to Tesla, Toyota may remove Toyota Tooling from Tesla's premises in the event of a breach by Tesla or cancellation, expiration or termination of this Agreement or any applicable Contract Document. Tesla shall not remove Toyota Tooling from its premises without Toyota's prior written consent.

18.12 Additional Remedies. In the event of a breach, cancellation or termination of any Tooling Purchase Order, this Agreement or any other applicable Contract Document caused as the result of an affirmative act, omission or non-performance by Tesla (i.e., for "cause"), Toyota shall be entitled to one or more of the following additional remedies, which remedies shall be cumulative and additional to any other or further remedies provided by this Agreement:

18.12.1 Cancel. Cancel the Tooling Purchase Order and any Tooling Authorization;

18.12.2 Set-Off. Set-off of any amounts held for or due to Tesla (whether for SPT Costs or otherwise) against claims of Toyota against Tesla;

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

18.12.3 Direct Dealings with Toolmaker. Deal directly with Toolmaker, including, but not limited to, the following actions:

18.12.3.1 To assume the Tooling Contract or to contract independently with Toolmaker for the completion of the Tooling;

18.12.3.2 To make payments to Toolmaker; all amounts paid to Toolmaker shall be credited against any amounts still due and owing to the Tesla;

18.12.3.3 If Toolmaker completes the Toyota Tooling and is paid in full for such work by Toyota, the payment to Toolmaker shall fully satisfy and discharge any additional amounts due to Tesla, irrespective of the original agreed-upon price or the actual amount paid to Toolmaker; and

18.12.3.4 If Toolmaker completes the Toyota Tooling and is paid more than the original agreed-upon price due to Tesla's default and in order to complete the Toyota Tooling, Toyota shall have a claim against Tesla for such differential in price.

18.12.4 Tooling. Upon any breach, cancellation or termination of the Tooling Purchase Order, Tesla shall, at the request of Toyota:

18.12.4.1 Immediately stop production and/or use of any Toyota Tooling;

18.12.4.2 Assemble and segregate the Toyota Tooling from any other property, including the removal of the Toyota Tooling from presses or other machinery;

18.12.4.3 Allow Toyota to immediately take possession of the Toyota Tooling, which includes the right to enter onto Tesla's premises or to require Tesla to pack and ship the Toyota Tooling, at Tesla's expense, to a destination selected by Toyota; and

18.12.4.4 Indemnify and hold harmless Toyota from any Toolmaker or other third party claim, including any claim arising out of any state mechanic's lien or similar statute.

**19. TECHNICAL ASSISTANCE.** Both Toyota and Tesla agree to, upon request, provide technical assistance in connection with the production of Products and assembly of RAV4 EVs to the other Party, all upon the terms and conditions set forth on terms and conditions to be mutually agreed upon by the parties.

## **20. MISCELLANEOUS**

20.1 Continuous Improvement. Tesla has an ongoing responsibility to perform under this Agreement in a manner which results in continuous process and quality improvement in Tesla's provision of Tesla Products and Services to Toyota. Tesla shall participate in quality improvement and other manufacturing programs and initiatives of Toyota, as set forth in one or more Contract Documents and otherwise comply with all other requirements and procedures set forth in one or more Contract Documents.

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

20.2 Guiding Principles. Tesla understands the importance of guiding principles for Toyota (“**Guiding Principles**”) which provide, among other things, the philosophical direction for Toyota. Guiding Principles specifically govern the practices and policies of Toyota as a corporate citizen in its dealings with its partners, suppliers, customers and communities in which Toyota team members and families live and work (“**Local Community**”). In all dealings between Toyota and Tesla, the Parties agree to use their commercially reasonable efforts to comply with the Guiding Principles (as these may be adopted and modified by Toyota from time to time and subject to review and approval by Tesla), including: (i) compliance with the spirit of all applicable commercial and other laws and all principles of corporate ethics; (ii) exhibiting proper care and concern for the environment and safety; (iii) respect for and contribution to the betterment and improvement of the Local Community; (iv) enlightenment, growth and continuous improvement of all management, employees and business partners; (v) adoption and practice of customer first principle, (vi) practice of fair trade and sound business practices in all business dealings; (vii) promotion of social responsibility for all management, employees and business partners; and (viii) consideration of, and regular contribution towards, sustainable development of society, the environment and the overall well-being of the Earth. While the Parties will strive to adhere to these Guiding Principles, failure to conform shall not be the basis for any allegation of breach, non-performance, or other material noncompliance with the provisions of this Agreement.

20.3 Force Majeure. Except with regard to the payment of money, neither Party shall be responsible for any delays caused by acts of God or any other cause beyond its reasonable control, including, without limitation, such things as actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, acts of war, embargo or court injunction or order, or the inability of either Party, its subcontractors and/or its suppliers to obtain power, material(s), parts, labor, equipment or transportation. Notwithstanding anything in this section to the contrary, no delay or failure of a Party to perform its obligations hereunder shall be excused if and to the extent such delay or failure is caused by labor problems of either Party, their subcontractors and/or suppliers, such as, by way of example and not of limitation, strikes or slowdowns. Any delay caused by one Party which affects the other Party’s ability to perform its obligations according to the terms of this Agreement shall extend the non-delaying Party’s obligation to perform by the same number of calendar days by which the delaying Party delayed in performing its obligations. Furthermore, in the event that Tesla claims an event of force majeure as provided herein, Tesla agrees to allocate Products between Tesla, Toyota and Tesla’s other customers on a pro-rata basis based on their historical purchase of such Products.

20.4 Applicability of Uniform Commercial Code. Except to the extent the provisions of this Agreement are clearly inconsistent therewith, this Agreement shall be governed by the applicable provisions of the Uniform Commercial Code. To the extent this Agreement entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when deeming such services, as “goods” would result in a clearly unreasonable interpretation.

20.5 Further Assurances. Each Party agrees to cooperate fully with the other Party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other Party, to better evidence and reflect the transactions described in and contemplated by this Agreement, and to carry into effect the intents and purposes of this Agreement.

20.6 No Exclusivity. The relationship contemplated in this Agreement is non-exclusive and each Party reserves the right to enter into arrangements with third parties

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

20.7 Compliance with Laws. Each Party warrants that in performance of work under this Agreement it has complied with or shall comply with all applicable national, federal, state, local laws and ordinances now or hereafter enacted including, without limitation, export laws and regulations.

20.8 Relationship of Parties. The Parties are independent contractors under this Agreement and no other relationship is intended, including, without limitation, a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither Party shall act in a manner that expresses or implies a relationship other than that of independent contractor, nor bind the other Party.

20.9 No Third Party Beneficiaries. Unless otherwise expressly provided for herein, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Toyota and Tesla (and their authorized assignees under Section 20.14) any rights, remedies or other benefits under or by reason of this Agreement.

20.10 Announcement; No Trademark Licenses. The Parties agree that no initial announcement or other public disclosure of the existence or terms of this Agreement, unless required by law, shall be made until the Parties have agreed upon the text of and issued an appropriate joint press release announcing this Agreement. Moreover, neither Party shall have any right or license to use the trademarks, service marks or logos of the other Party for any purpose without first obtaining written consent of the other Party from an authorized representative thereof.

20.11 Advertising. Without Toyota's prior written consent, Tesla shall not use or permit use of the words "Toyota Motor Corporation," "Toyota Motor Engineering & Manufacturing North America, Inc.," "Toyota Motor Sales, U.S.A., Inc.," "Toyota" or any similar word or trademark of Toyota in the marketing of products produced by Tesla. Without Tesla's prior written consent, Toyota shall not use or permit use of the words "Tesla," "Tesla Motors," "Tesla Motors, Inc.," "Tesla Fremont" or any similar word or trademark of Tesla in the marketing of products produced by Toyota.

20.12 Equitable Relief. Each Party acknowledges that a breach by the other Party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching Party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching Party may institute an action to enjoin the breaching Party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and the non-breaching Party may seek the entry of an injunction enjoining the breaching Party from any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching Party may be entitled at law or in equity.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

20.13 Notices. Any notice required or permitted to be given by either Party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by first class mail (certified or registered), or by facsimile confirmed by first class mail (registered or certified), or by electronic mail to the Project Manager of the other Party. Notices will be deemed effective: (i) three (3) Business Days after deposit, postage prepaid, if mailed; (ii) the next day if sent by overnight mail; or (iii) the same day if sent by facsimile and confirmed as set forth above. A copy of any notice shall be sent to the following:

Toyota:	Toyota Motor Engineering & Manufacturing North America, Inc. 25 Atlantic Avenue Erlanger, Kentucky 4108 U.S.A.  Attn: Legal Department Fax: +[***]
Tesla	Tesla Motors, Inc. 3500 Deer Creek Road Palo Alto, CA 94304 U.S.A.  Attn: Legal Department Fax: +[***]

20.14 Assignment. A Party may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party. Any attempted assignment or delegation without the other Party's written consent will be void. The rights and liabilities of the Parties under this Agreement will bind and inure to the benefit of the Parties' respective successors and permitted assigns.

20.15 Waiver and Modification. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the Parties.

20.16 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

20.17 Governing Law and Jurisdiction. This Agreement and any action related hereto shall be governed, controlled, interpreted and defined by and under the laws of the State of California and the United States, without regard to the conflicts of laws provisions thereof. The Parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

20.18 Conflicts Resolution.

20.18.1 Resolution by the Parties. The Parties will use reasonable efforts to resolve any dispute arising out of this Agreement through a meeting of appropriate managers from each Party. If the Parties are unable to resolve the dispute, either Party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation or such other time period as agreed upon by the Parties, the relevant dispute shall be finally settled pursuant to Section 20.18.2

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

20.18.2 Alternative Dispute Resolution. Subject to either Party's right to seek injunctive relief, or any dispute in relation to Intellectual Property Rights (which shall be resolved in accordance with the provisions of the Phase I Agreement), in the event of a dispute concerning this Agreement or the Party's obligations hereunder not otherwise resolved by Section 20.18.1, the Parties agree to submit the matter in dispute to binding arbitration for the final award thereto. Written notice of the intent to submit a matter to arbitration shall be given by the Party requesting the same. The arbitration proceedings shall be conducted in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of Business Disputes, or, if the Parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, three (3) arbitrators shall be used to decide the outcome of the arbitration. Each party shall select one (1) arbitrator, and the two (2) selected arbitrators will then select a third arbitrator. Such arbitration shall be conducted utilizing the English language and held in or near San Francisco, California. Neither Party's rights regarding termination under the terms of this Agreement shall be limited by this Section 20.18

20.19 Headings. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

20.20 Entire Agreement. This Agreement, including all exhibits and Contract Documents which are incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. The Parties may use standard business forms or other communications, but use of such forms is for convenience only and does not alter the provisions of this Agreement. Neither Party will be bound by, and each specifically objects to, any provision that is different from or in addition to this Agreement (or any of its exhibits or Contract Documents), whether proffered verbally or in any quotation, invoice, shipping document, acceptance, confirmation, correspondence, or otherwise, unless such provision is specifically agreed to in a writing and signed by duly-authorized representatives of both Parties and indicates an intent to supersede or amend the terms hereof.

20.21 Cumulative Rights; Withhold Rights. The rights and remedies of the Parties under this Agreement are cumulative, and either Party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity, including, without limitation, resort to injunctive or other equitable relief, without bond (and the exercise of such right shall not constitute a waiver of any other or additional rights at law, in equity or pursuant to the terms hereof).

20.22 Interpretation. This Agreement, including any exhibits and Contract Documents hereto, shall be construed without the aid of any canon or rule of law requiring interpretation against the Party drafting or causing the drafting of an agreement or the portions of an agreement in question, it being agreed that all Parties hereto have participated in the preparation of this Agreement. Except where the context otherwise requires, words denoting the singular include the plural (and vice versa), words denoting any one gender include all genders. Unless otherwise stated, a reference to a Section is reference to a Section of this Agreement, and "including" means "including, without limitation".

20.23 Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

IN WITNESS WHEREOF, the Parties have executed this Agreement by persons duly authorized as of the date and year first above written.

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA, INC.

TESLA MOTORS, INC.

By: \_\_\_\_\_  
Name: Shigeki Terashi  
Title: President  
Date: July , 2011

By: \_\_\_\_\_  
Name: JB Straubel  
Title: Chief Technical Officer  
Date: July , 2011

[Signature Page to Supply and Services Agreement]

**Schedule of Exhibits:**

- Exhibit A – Intentionally Omitted
- Exhibit B – Powertrain Battery
- Exhibit C – Powertrain Parts
- Exhibit D – Service Parts
- Exhibit E – Testing Equipment
- Exhibit F – Intentionally Omitted
- Exhibit G – Tesla Manufacturing and Shipping Locations
- Exhibit H – Refurbished Parts Program
- Exhibit I – Intentionally Omitted
- Exhibit J – Warranty/Warranty Cost Processing
- Exhibit K – Service
- Exhibit L – Tesla Products
- Exhibit M – Design & Development Objectives & Implementation Strategy

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit A**

**Intentionally Omitted**

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit B**

**Powertrain Battery**

**1. POWERTRAIN BATTERY**

[\*\*\*]

[Note: This list may be modified by mutual agreement of the Parties as the design process continues.]

**2. POWERTRAIN BATTERY SPECIFICATIONS**

Powertrain Battery Specifications shall be as set forth in the HV Battery Specification agreed upon between Toyota by Tesla, as the same may be amended by agreement of the Parties from time to time.

**3. ORDERING AND FORECASTS FOR POWERTRAIN BATTERIES**

Ordering and forecasts will be consistent with the requirements of this Agreement and may be addressed in one or more Contract Documents issued through the Toyota Supplier Network.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit C**

**Powertrain Parts**

**1. POWERTRAIN PARTS**

Toyota will receive and install the following Tesla parts as this list may be amended from time to time as mutually agreed upon by the Parties.

[\*\*\*]

[Note: This list may be modified by mutual agreement of the parties as the design process continues.]

**2. POWERTRAIN PARTS SPECIFICATIONS**

Powertrain Part Specifications shall be [\*\*\*] agreed upon between Toyota and Tesla, as the same may be amended by agreement of the Parties from time to time.

**3. ORDERING AND FORECASTS FOR POWERTRAIN PARTS**

Ordering and forecasts will be consistent with the requirements of this Agreement and may be addressed in one or more Contract Documents issued through the Toyota Supplier Network.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit D**  
**Service Parts**

**1. SERVICE PARTS**

The list of Service Parts will be determined by mutual agreement through good faith negotiations between Tesla and Toyota and documented in one or more contract documents.

**2. SERVICE PARTS SPECIFICATIONS**

The Specifications for the Service Parts will be determined by mutual agreement through good faith negotiations between Tesla and Toyota and documented in one or more contract documents.

**3. ORDERING AND FORECASTS FOR SERVICE PARTS**

Ordering and forecasts will be consistent with the requirements of this Agreement and may be addressed in one or more Contract Documents issued through the Toyota Supplier Network. The parties shall separately agree on specific procedures relating to packaging and shipping.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit E**  
**Testing Equipment**

**1. TESTING EQUIPMENT**

[\*\*\*]

[Note: This list may be modified by mutual agreement of the Parties as the design process continues.]

**2. TESTING EQUIPMENT SPECIFICATIONS**

Specifications to be jointly developed by Tesla and TEMA. The parties agree to enter into good faith negotiations with the intention of reaching mutual agreement on such specification on or before the end of August, 2011.

**3. ORDERING AND FORECASTS FOR TESTING EQUIPMENT** The Parties anticipate that the Testing Equipment listed above shall be delivered on the following dates, but recognize that this timing may be impacted as the functionality of the Testing Equipment is defined by agreement between the Parties.

[\*\*\*]

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit F**

**Intentionally Omitted**

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit G**

**Tesla Manufacturing and Shipping Locations**

Tesla Factory, Fremont, California

Tesla, Palo Alto, California

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit H**

**Refurbished Parts Program**

To ensure reasonable customer ownership and Toyota/Tesla warranty costs, select [\*\*\*] Service Parts supplied by Tesla will be offered to dealers as “refurbished” Products. The term “refurbished” refers to an exchange program or upon the request of Toyota, the repair of a customer’s original part. Details and a list of Service Parts included will be developed and jointly agreed upon by Tesla and Toyota. An addendum will be provided to this Agreement covering complete details for this program.

Points to be addressed in a “refurbished” program will include, but are not be limited to:

1. WITHIN THIRTY (30) DAYS OF A SIGNED AGREEMENT, TESLA WILL PROVIDE DETAILS OF ITS EXISTING SERVICE PARTS REFURBISHMENT PROGRAM, ASSIGN TESLA REFURBISHMENT PROGRAM DEVELOPMENT TEAM MEMBERS AND BEGIN DISCUSSIONS WITH TOYOTA TO DEVELOP THE ELEMENTS AND AGREEMENT FOR AN ONGOING TESLA POWERTRAIN COMPONENT REFURBISHMENT PROGRAM FOR THE RAV4 EV.
2. PROGRAM TO BE ACTIVE NO LESS THAN THE AGREED TERM OF SERVICE PARTS SUPPLY [\*\*\*] YEARS FOLLOWING THE FINAL PRODUCTION RUN OF EACH SERVICE PART), PROVIDED THAT TESLA MAY, IN ITS SOLE DISCRETION, PROVIDE NEW REPLACEMENT PARTS IN LIEU OF REFURBISHED PARTS.
3. THIS PROGRAM WILL COVER WARRANTY AND NON-WARRANTY (“CUSTOMER PAY”) SERVICE PARTS.
4. WHILE ANY RAV4 EVS ARE COVERED BY TESLA’S WARRANTY TO TOYOTA AS SET FORTH IN EXHIBIT J, TESLA WILL PROVIDE REFURBISHMENT CAPACITY SUFFICIENT TO ENSURE SHIPMENT (I.E., DELIVERY TO THE CARRIER) OF REFURBISHED PARTS AS FOLLOWS:
  - 4.1 For Refurbished Powertrain Batteries: Within [\*\*\*] business days from Tesla’s receipt of an order in the case of a battery exchange and within [\*\*\*] days of receipt by Tesla of a core in the case of a repair
  - 4.2 For Other Refurbished Parts: By next business day following Tesla’s receipt of an order.
  - 4.3 The time requirements set forth in 4.1 and 4.2 above shall apply for [\*\*\*] years after the end of production of the vehicle, consistent with Tesla’s maximum warranty period to Toyota. Thereafter, the Parties shall negotiate in good faith the applicable turnaround times for refurbished parts. The Parties recognize that for Tesla to deliver a refurbished powertrain battery, Toyota will need to provide Tesla with sufficient information regarding battery condition in advance of the requested exchange.
5. TOYOTA SHALL REQUIRE ITS DEALERS TO RETURN PARTS TO TESLA FOR REFURBISHMENT (I.E., DELIVERY TO THE CARRIER) WITHIN TEN (10) DAYS OF SUCH DEALER’S RECEIPT OF THE REFURBISHED PART.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**6.** TESLA WILL PROVIDE ALL NECESSARY AND APPROPRIATE DIAGNOSTIC AND OTHER INFORMATION TO TOYOTA SUFFICIENT TO ALLOW TOYOTA TO TRAIN DEALERSHIP TECHNICIANS TO RELIABLY DIAGNOSE WARRANTY ISSUES WITH THE PRODUCT IN ACCORDANCE WITH THE WARRANTY DIAGNOSIS PROCEDURES OUTLINED IN SECTION 3.4 OF EXHIBIT K. THE DETERMINATION OF WARRANTY REPAIR OR REPLACEMENT OF PARTS INCLUDED IN THE REFURBISHMENT PROGRAM SHALL BE ELEVATED FROM THE DEALERSHIP LEVEL TO APPROPRIATE TOYOTA PERSONNEL FOR REVIEW AND CONFIRMATION. FOR WARRANTY REPAIR AND REPLACEMENT OF POWERTRAIN BATTERY, TESLA SUBJECT MATTER EXPERTS WILL BE CONSULTED.

**7.** UNLESS OTHERWISE AGREED TO, TESLA WILL ENSURE THAT THE QUALITY, PERFORMANCE, AND SERVICE LIFE OF REFURBISHED PRODUCTS MEET THE SAME SPECIFICATIONS AND TECHNICAL STANDARDS AS SERVICE PARTS, EXCEPT FOR THE POWERTRAIN BATTERY SERVICE PART. THE REFURBISHED POWERTRAIN BATTERY SERVICE PART SHALL BE IN A CONDITION (IN TERMS OF THE MWH THROUGHPUT OR KWH CAPACITY) EQUAL TO OR GREATER THAN THE EXCHANGED BATTERY (WITHOUT TAKING INTO ACCOUNT THE DEFECTIVE CONDITION OF THE EXCHANGED BATTERY). THE PARTIES RECOGNIZE THAT FOR TESLA TO DELIVER SUCH A REFURBISHED POWERTRAIN BATTERY SERVICE PART, TOYOTA WILL NEED TO PROVIDE TESLA WITH THE INFORMATION REGARDING BATTERY CONDITION AGREED TO BY TOYOTA AND TESLA AS CONTEMPLATED IN SECTION 3.4 OF EXHIBIT K IN ADVANCE OF THE REQUESTED EXCHANGE; AND SUFFICIENT INFORMATION REGARDING BATTERY CONDITION. TESLA WILL PROVIDE INFORMATION REGARDING THE SPECIFICATIONS AND TECHNICAL STANDARDS FOR EACH REFURBISHED POWERTRAIN BATTERY SERVICE PART WITH RESPECT TO MWH THROUGHPUT AND CAPACITY. TESLA WILL PROVIDE TOYOTA WITH BASIC INFORMATION REGARDING HOW EACH SERVICE PART ARE REFURBISHED AND VERIFIED.

**8.** TOYOTA RESERVES THE RIGHT TO AUDIT THE REFURBISHMENT PROCESS UPON REASONABLE NOTICE, TO ENSURE THAT TOYOTA QUALITY IS MET OR EXCEEDED.

**9.** TRANSFER OF OWNERSHIP FOR REFURBISHED PRODUCTS OCCURS WHEN TESLA DELIVERS REFURBISHED PRODUCTS TO TOYOTA'S FREIGHT CARRIER ALONG WITH THE APPROPRIATE BILL OF LADING. FOR SERVICE PARTS, TOYOTA IS SOLELY RESPONSIBLE FOR FREIGHT COSTS. FREIGHT COSTS FOR WARRANTY PARTS SHALL BE ALLOCATED AS SET FORTH IN SECTION 11 AND ON EXHIBIT J.

**10.** TESLA WILL PROVIDE ONGOING REFURBISHED PRODUCTS SUPPORT AS AGREED UPON BY THE PARTIES.

**11.** TESLA WILL PROVIDE DURABLE, REUSABLE SHIPPING CONTAINERS THAT WILL ACCOMMODATE OUTBOUND SHIPMENTS OF REFURBISHED PRODUCTS AND DEALER RETURN SHIPMENTS OF THE CORRESPONDING DEFECTIVE ITEMS.

**12.** A FINAL LIST OF ALL TESLA PRODUCTS TO BE INCLUDED IN THE REFURBISHED PARTS PROGRAM, ALONG WITH CORE VALUES AND PRICES FOR SUCH TESLA PRODUCTS, WILL BE AGREED UPON BY TOYOTA AND TESLA AT LEAST SIXTY (60) DAYS BEFORE SOP.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit I**  
**Intentionally Omitted**

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit J**

**Warranty/Warranty Cost Processing**

**Warranty - Powertrain Battery**

[\*\*\*]

**Warranty - All Other Parts (Except Service Parts and Testing Equipment)**

[\*\*\*]

Warranty – Service Parts (Except the Powertrain Battery)

[\*\*\*]

Warranty – Service Parts (Powertrain Battery)

[\*\*\*]

**Warranty Cost Apportionment**

Warranty costs shall be apportioned between Tesla and Toyota in the following manner:

[\*\*\*]

**Defective Parts**

[\*\*\*]

Recall/Field Action Costs

[\*\*\*]

Other Repair Parts

[\*\*\*]

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit K**

**Services**

Vehicle maintenance, inspections, and repairs shall, in general, be performed by technicians at Toyota dealers, except that under no circumstances will any Toyota technician be authorized to “repair” or attempt to “repair” any Powertrain Battery. In order for Toyota technicians to conduct authorized repairs of Powertrain Parts (except Powertrain Batteries), Tesla shall provide Toyota with a list of authorized repairs as well as the following necessary elements as specified below.

All information to be provided by Tesla to Toyota necessary to the development of service materials, service procedure, service tools and ECU communications outlined below will be provided not later than N -8, unless otherwise mutually agreed by Toyota and Tesla. All information and support described in this Exhibit shall be included in the price of Products under the Agreement.

**1. Maintenance and Inspections**

- 1.1 Tesla shall provide Toyota with information and methods necessary for Toyota dealers to perform pre-delivery vehicle inspections and maintenance.
- 1.2 Tesla shall, in a timely manner, provide Toyota with all mutually agreed upon information for the creation of any necessary manuals, including but not limited to repair manuals, new car feature manuals, owner’s manuals, electrical wiring diagrams, and emergency response guidance.
- 1.3 Tesla shall, in a timely manner, provide Toyota with a working sample of a diagnostic tool and other unique service tools as agreed upon by the Parties, along with mutually agreed upon information, necessary for Toyota to develop necessary diagnostic and other service tools.
- 1.4 Tesla shall provide Toyota with mutually agreed upon methods and/or procedures for technicians at Toyota dealers to determine the level of the Powertrain Battery capacity in accordance with the warranty set forth in Exhibit J. Methods and/or procedures shall be determined by mutual consent obtained through negotiation in good faith between Tesla and Toyota.

**2. Repair**

In order for malfunctions and/or faulty parts to be identified by Toyota dealers and/or Toyota, Tesla shall provide Toyota with the following:

**2.1 Information**

- 2.1.1 Tesla shall provide on-board diagnosis criteria and protocols to (i) enable malfunctions and/or faulty parts to be identified and (ii) to identify current firmware/software for all programmable components. Such criteria and protocols shall be provided to Toyota on a priority basis as soon as they are available.
- 2.1.2 Tesla shall provide fault isolation procedures, diagnostic data parameters and system operation information to enable malfunctions and/or faulty parts to be identified.

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

2.1.3 As soon as commercially reasonable, Tesla shall notify Toyota of and provide information pertaining to any consequential design changes, software updates or production countermeasures. Such notification shall take place through the Toyota ECI/ECR process.

## 2.2 Tools

- 2.2.1 Tesla shall provide and update as necessary information and necessary interfaces to (a) enable the Toyota diagnostic tool or mutually agreed operating environment to perform a vehicle “health check” and top line diagnostics, and (b) allow the Toyota diagnostic tool or mutually agreed upon operating environment to provide top line fault code (DTC), MIL Status and calibration version detail for all applicable Tesla components.
- 2.2.2 Tesla shall provide to Toyota a RAV4 EV Powertrain diagnostic tool and/or applications to allow Tesla powertrain specific fault isolation. Tesla shall provide necessary information and collaborate with Toyota to allow Tesla’s diagnostic applications to operate on the PC used for Toyota’s diagnostic tool or other mutually agreed upon operating environment. Tesla will provide all necessary and appropriate diagnostic and other information to Toyota sufficient to allow Toyota to train dealership technicians to reliably diagnose warranty issues with the Tesla Products, consistent with the Warranty Diagnosis Procedures outlined in Section 3.4 of this Exhibit K.
- 2.2.3 Tesla shall update versions of said applications in response to requests from Toyota to implement new functions or address issues as needed and agreed upon; further, Tesla shall provide Toyota with said updated version in a timely manner. Responsibility for expenses incurred shall be determined separately by mutual consent obtained through negotiation in good faith between Tesla and Toyota on a case-by-case basis.
- 2.2.4 Tesla shall ensure that the diagnosis tools or applications it provides enable Toyota dealers and Toyota to determine whether malfunctions and/or faults may affect components that have the potential to impact safety.
- 2.2.5 Tesla shall provide all firmware/calibration software necessary for service and any specific software or applications required for installation of the Products.
- 2.2.6 Prior to SOP, Tesla will explain to Toyota what categories of information are collected from RAV4 EVs in the possession of consumers (“Vehicle Information”). Tesla and Toyota shall agree from time to time in writing on the Vehicle Information which Tesla will share with Toyota. The Vehicle Information to be collected by Tesla may be amended from time to time with the mutual agreement of the Parties. In collecting and sharing such Vehicle Information, the Parties shall cooperate to ensure compliance with all applicable laws, rules and regulations including those relating to privacy.

## 2.3 Training

- 2.3.1 Tesla shall provide Toyota with the necessary training and/or training materials to enable Toyota dealers to carry out repair work and shall dispatch trainers/Subject matter experts to Toyota. The parties anticipate that Tesla will offer two three-day training sessions for Toyota subject matter experts and other sessions as may be mutually agreed.

\*\*\* Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**3. Diagnostic and Repair Support**

- 3.1 If technicians at Toyota dealers are unable to diagnose and/or repair vehicle malfunctions and/or faults, Tesla shall provide Toyota with access to appropriate subject matter experts to affect the necessary repair support.
- 3.2 The Parties shall establish a framework to ensure inquiries from the other Party via telephone, email, etc. are responded to promptly; further, as mutually agreed upon in advance, Tesla shall dispatch the necessary personnel to carry out on-site investigation and repair support. The parties anticipate that Tesla will designate two subject matter experts to be the primary points of contact and resolution for such services. Upon mutual agreement, these experts shall be dispatched for on-site investigation and repair support. In addition, for the first year of shipment of Tesla Products, the parties anticipate that Tesla will further designate up to three full time engineers to serve as additional subject matter experts and escalation support.
- 3.3 Tesla shall disclose details of diagnosis and repair work provided for in the preceding element to provide Toyota with failure mode and root cause analysis as well as to allow Toyota to provide an explanation of results to its customers. Under no circumstances shall Tesla be obligated to disclose confidential intellectual property or other proprietary information.
- 3.4 Warranty Diagnosis Procedures. The determination of warranty repair or replacement of parts included in the Refurbishment Program shall be elevated from the dealership level to appropriate Toyota personnel for review and confirmation. For warranty repair and replacement of Powertrain Battery, Tesla subject matter experts will be consulted. Following such consultation, Toyota will, in its sole discretion, determine whether or not a repair is covered under Toyota's warranty to its customer as well as the appropriate repair or other corrective action, whether in connection with the Refurbishment Program or otherwise. Upon completion of the above review, confirmation and consultation the determination of whether or not a repair or replacement (including a refurbished part) is covered by Tesla's warranty to Toyota, shall be made by mutual agreement of Tesla and Toyota. If the Parties are unable to agree, the dispute may be submitted to third party resolution pursuant to Section 20.18.2. To assist with that determination, Toyota shall submit a Return Material Authorization together with returns that describe the diagnostics performed, the failure stated by such diagnostics along with vehicle logs and such other information the form and substance of which shall be negotiated by the Parties in good faith. As part of this determination in respect of a Powertrain Battery, Tesla will also be furnished with sufficient information on battery condition, as agreed between Toyota and Tesla, to enable Tesla to meet its obligations under Section 7 of Exhibit H to furnish a refurbished Powertrain Battery Service Part in a condition (in terms of the MWh throughput or kWh capacity) equal to or greater than the exchanged battery (without taking into account the defective condition of the exchanged battery).

**4. Buy-back Response**

- 4.1 If buy-back is unavoidable because a vehicle is unable to be repaired, responses shall be determined by mutual consent obtained through negotiation in good faith between Tesla and Toyota.

\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**5. Miscellaneous**

5.1 The details of the above elements shall be determined separately by mutual consent obtained through negotiation in good faith between Tesla and Toyota.

5.2 Responses to matters necessary for providing an appropriate service not prescribed in the above elements shall be decided within an appropriate time frame in accordance with the situation through consultation in good faith between Tesla and Toyota.

5.3 All other services required by Toyota will be provided by Tesla at terms and conditions to be negotiated in good faith between the Parties.

\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit L**

Tesla Products

Tesla Products are the following:

**1. POWERTRAIN BATTERY**

[\*\*\*]

**2. POWERTRAIN**

[\*\*\*]

**3. SERVICE PARTS IN CONNECTION WITH THE FOREGOING**

**4. TESTING EQUIPMENT**

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**Exhibit M**

Design & Development Objectives/Implementation Strategy

Toyota and Tesla each acknowledge their intention to proactively address safety and quality issues during the development phase of the RAV4 EV. To achieve that goal, the Parties agree on the following:

1. Design & Development Objectives

[\*\*\*]

2. Implementation Strategy

[\*\*\*]

[\*\*\*] Information has been omitted and filed separately with the Securities and Exchange Commission. Confidential Treatment has been requested with respect to the omitted portions.

**RULE 13a-14(a)/15d-14(a) CERTIFICATION**

I, Elon Musk, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tesla Motors, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2011

/s/ Elon Musk

Elon Musk  
Chief Executive Officer  
(Principal Executive Officer)

**RULE 13a-14(a)/15d-14(a) CERTIFICATION**

I, Deepak Ahuja, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tesla Motors, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2011

/s/ Deepak Ahuja  
Deepak Ahuja  
Chief Financial Officer  
(Principal Financial Officer)

**SECTION 1350 CERTIFICATIONS**

I, Elon Musk, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Quarterly Report of Tesla Motors, Inc. on Form 10-Q for the quarterly period ended September 30, 2011, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla Motors, Inc.

Date: November 14, 2011

/s/ Elon Musk  
Elon Musk  
Chief Executive Officer  
(Principal Executive Officer)

I, Deepak Ahuja, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Quarterly Report of Tesla Motors, Inc. on Form 10-Q for the quarterly period ended September 30, 2011, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla Motors, Inc.

Date: November 14, 2011

/s/ Deepak Ahuja  
Deepak Ahuja  
Chief Financial Officer  
(Principal Financial Officer)

