

PERSONAL AND CONFIDENTIAL

August 17, 2018

Elon Musk
1 Rocket Road
Hawthorne, CA 90250

UNITED STATES DISTRICT COURT	
NORTHERN DISTRICT OF CALIFORNIA	
Case Number:	3:18-cv-04865-EMC
PLTF / DEFT	818
Exhibit No.	
Date Admitted:	
By:	
Angella Meuleman, Deputy Clerk	

Dear Elon:

We are pleased to confirm the arrangements under which Goldman Sachs & Co. LLC ("Goldman Sachs") is engaged by Elon Musk ("EM") as financial advisor in connection with the possible acquisition of all or a portion of the stock or assets of Tesla, Inc. (the "Target"), which may include a take-private transaction. In addition, EM intends to enter into a separate and/or amended engagement letter with Goldman Sachs in connection with the above-referenced transaction providing for, among other things, a mutually agreeable transaction fee to be paid to Goldman Sachs.

During the term of our engagement, we will provide you with financial advice and assistance in connection with this potential transaction, including assisting you in negotiating and structuring the financial aspects of such transaction.

Please note that any written or oral advice provided by Goldman Sachs in connection with our engagement is exclusively for the information of EM in connection with your consideration of the transaction, and such advice and the terms of this letter may not be disclosed to any third party (other than EM's outside law firms or accounting firms, in each case who has been informed by you of the confidential nature of such advice and the terms of this letter and has agreed to treat such information confidentially) or circulated or referred to publicly (including any reference to the fact that we have rendered such advice or entered into this letter) or used or relied on by any other party or for any other purpose without our prior consent, except (i) such disclosure as may be required pursuant to a subpoena, order or request issued by a court of competent jurisdiction or by a judicial, regulatory or administrative or legislative body or committee or (ii) Goldman Sachs shall not unreasonably withhold its consent in connection with the defense of any action, suit or proceeding relating to a transaction contemplated hereby, provided that EM shall have, with respect to (i) or (ii), except as prohibited by law, (a) promptly notified Goldman Sachs of the receipt of any such subpoena, order or request or EM's intention to so utilize such advice or the terms of this letter, (b) consulted with Goldman Sachs as to the advisability of taking steps to resist or narrow the scope of the disclosure contemplated thereby and (c) made efforts, or cooperated with Goldman Sachs in any efforts it may make (in each case, at the sole cost and expense of Goldman Sachs) to obtain an order or other reliable assurance that confidential treatment will be accorded to such advice or the terms of this letter and (d) solely in the case of (ii) above, we have reviewed in advance the text of any disclosure related to Goldman Sachs

Elon Musk
August 17, 2018
Page 2

and you have accepted, in good faith, all of our reasonable comments thereto. If reference to Goldman Sachs is required to be made in a proxy statement, registration statement, information statement, recommendation statement, solicitation/recommendation statement, offering memorandum, prospectus or any similar document or any similar document required to be filed under the federal securities laws or the laws, rules or regulations of another jurisdiction, we will not unreasonably withhold our consent thereto, provided that EM provides us the opportunity to review such disclosures prior to filing and accepts all of our reasonable comments thereto. The provisions of this paragraph shall survive any termination or completion of the engagement provided by this letter.

In connection with engagements such as this, it is our firm policy to receive indemnification. Additionally, there have been, may currently be, and may from time to time in the future be, governmental investigations into, or governmental litigation with respect to, the Target and EM, as well as associated shareholder lawsuits (collectively, the "Covered Matters"). In connection with the foregoing sentences of this paragraph, EM agrees to the provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this letter.

Our services may be terminated by you or us at any time with or without cause effective upon receipt of written notice to that effect; provided, however, that our services will automatically terminate on the date one year after the date of this letter unless we shall mutually agree in writing to extend them for a specified period.

EM recognizes that, in providing our services pursuant to this letter, we will rely upon and assume the accuracy and completeness of all of the financial, legal, regulatory, accounting, tax and other information provided to, discussed with or reviewed by us for such purposes, and we do not assume any liability therefor or responsibility for the accuracy, completeness or independent verification thereof. Goldman Sachs will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities (including any contingent, derivative or off-balance sheet assets and liabilities) of EM, the Target or any other party or any of their respective affiliates or to advise or opine on any related solvency or viability issues. It is understood and agreed that Goldman Sachs will act under this letter as an independent contractor with duties solely to EM and nothing in this letter or the nature of our services in connection with this engagement or otherwise shall be deemed to create a fiduciary duty or fiduciary or agency relationship between us and EM or the stockholders, employees or creditors of EM or the Target, and EM agrees that he shall not make, and hereby waives, any claim based on an assertion of such a fiduciary duty or relationship. Except as set forth in Annex A hereto, nothing in this letter is intended to confer upon any other person (including stockholders, employees or creditors of EM or the Target) any rights or remedies hereunder or by reason hereof.

EM acknowledges that he has reviewed the information with respect to Goldman Sachs' other businesses and activities set forth in Annex B hereto, which is incorporated by reference into this letter.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), Goldman Sachs is required to obtain, verify and record

Elon Musk
August 17, 2018
Page 3

information that identifies its clients, including EM, which information may include the name and address of its clients, as well as other information that will allow Goldman Sachs to properly identify its clients.

Goldman Sachs does not provide accounting, tax, legal or regulatory advice. Notwithstanding anything herein to the contrary, you are authorized to disclose to any person the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to you relating to that treatment and structure, without Goldman Sachs imposing any limitation of any kind. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this letter, which shall become a binding agreement upon our receipt. We are delighted to accept this engagement and look forward to working with you on this assignment.

Very truly yours,

Confirmed:

Goldman Sachs & Co.
(GOLDMAN SACHS & CO. LLC)
Name: BRIAN DONG
Title: MANAGING DIRECTOR

ELON MUSK


Date: August 17, 2018

Annex A

In the event that Goldman Sachs becomes involved in any capacity in (i) any Covered Matters or (ii) any action, proceeding or investigation brought by or against any person, including stockholders of the Target, in connection with or as a result of either our engagement or any matter referred to in this letter, EM periodically will reimburse Goldman Sachs for its reasonable and documented out-of-pocket legal and other expenses (including the reasonable cost of any investigation and preparation but excluding overhead and internal banker and legal salaries) incurred in connection therewith; provided, that if it is found in any such action, proceeding or investigation that any loss, claim, damage or liability of Goldman Sachs has resulted from the gross negligence or bad faith of an Indemnified Person (as defined below) in performing the services which are the subject of this letter, Goldman Sachs shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the action, proceeding or investigation that led to such finding. EM also will indemnify and hold Goldman Sachs harmless against any and all losses, claims, damages or liabilities to any such person (i) that arise in connection with any Covered Matters or (ii) in connection with or as a result of either our engagement or any matter referred to in this letter, except to the extent that any such loss, claim, damage or liability results from the gross negligence or bad faith of an Indemnified Person in performing the services that are the subject of this letter. If for any reason the foregoing indemnification is unavailable to Goldman Sachs or insufficient to hold it harmless, then EM shall contribute to the amount paid or payable by Goldman Sachs as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of EM on the one hand and Goldman Sachs on the other hand in the matters contemplated by this letter as well as the relative fault of EM and Goldman Sachs with respect to such loss, claim, damage or liability and any other relevant equitable considerations; provided, however, if it is found that (i) Goldman Sachs has acted with gross negligence or bad faith in performing the services that are the subject of this letter resulting in such loss, claim, damage or liability and (ii) EM has not acted with at least an equal level of misconduct with respect to the matters resulting in such loss, claim, damage or liability, then the provisions of this sentence shall not apply. EM also agrees that Goldman Sachs shall not have any liability to EM or any person asserting claims on behalf of or in right of EM (i) in connection with any Covered Matters or (ii) in connection with or as a result of either our engagement or any matter referred to in this letter except to the extent that any losses, claims, damages, liabilities or expenses incurred by EM result from the gross negligence or bad faith of an Indemnified Person in performing the services that are the subject of this letter. The reimbursement, indemnity and contribution obligations of EM under this paragraph shall be in addition to any liability which EM may otherwise have, and such obligations, as well as the exculpation set forth in the preceding sentence, shall extend upon the same terms and conditions to any affiliate of Goldman Sachs and the partners, directors, agents, employees and controlling persons (if any), as the case may be, of Goldman Sachs and any such affiliate (any of the foregoing, together with Goldman Sachs, an "Indemnified Person"), and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of EM and any such Indemnified Person.

Promptly after receipt by an Indemnified Person of notice of its involvement in any action, proceeding or investigation, Goldman Sachs shall, if a claim for indemnification in respect thereof is to be made under this Annex A, notify EM in writing of such involvement. Failure by Goldman Sachs to so notify EM shall relieve EM from the obligation to indemnify any Indemnified Person under this Annex A to the extent that EM suffers actual prejudice as a result of such failure. EM shall be entitled to assume the defense of any such action, proceeding or investigation with counsel reasonably satisfactory to the Indemnified Person. Upon assumption by EM of the defense of any such action or proceeding, the Indemnified Person shall have the right to participate in such action or proceeding and to retain its own counsel but EM shall not be liable for any legal expenses of other counsel subsequently incurred by such Indemnified Person in connection with the defense thereof unless (i) EM has agreed to pay such fees and expenses, (ii) EM shall have failed to employ counsel reasonably satisfactory to the Indemnified Person, or (iii) the Indemnified Person shall have been advised by counsel that there are

Elon Musk
August 17, 2018
Page 5

actual conflicting interests between EM and the Indemnified Person, including situations in which there are one or more legal defenses available to the Indemnified Person that are different from or additional to those available to EM, provided, however, that EM shall not, in connection with any one such action or proceeding or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for the fees and expenses of more than one separate firm of attorneys (and one firm of local counsel with respect to each jurisdiction in which a claim is being made, if required in order to effectively defend against such action or proceeding) at any time for all Indemnified Persons, including Goldman Sachs. EM shall not consent to the terms of any compromise or settlement of any action defended by EM in accordance with the foregoing for which an Indemnified Person would be entitled to indemnification from EM hereunder without the prior written consent of the Indemnified Person unless such compromise or settlement (i) includes an unconditional release of the Indemnified Person from all liability arising out of such action and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Indemnified Person. EM shall not be required to indemnify any Indemnified Person for any amount paid or payable as a result of the settlement or compromise of any action, proceeding or investigation without the written consent of EM (not to be unreasonably withheld).

Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either our engagement or any matter referred to in this letter is hereby waived by the parties hereto. EM and Goldman Sachs agree that any suit or proceeding arising in respect to this letter or our engagement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and EM and Goldman Sachs agree to submit to the jurisdiction of, and to venue in, such courts. The provisions of this Annex A shall survive any termination or completion of the engagement provided by this letter, and this letter and any matters related to this engagement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law principles that would result in the application of any law other than the law of the State of New York.

Annex B

As EM knows, Goldman Sachs together with its affiliates ("GS") is a full service financial institution. As is the case with other full service firms, GS engages in advisory, underwriting, lending and financing, principal investing, sales and trading, research and investment management activities with a variety of clients and counterparties, corporate, governmental, institutional and individual. The firm's clients and counterparties may include persons and entities in any sector in which EM does business or the Target's sector, with which EM has a relationship, or that may be involved in EM's potential transaction, and the firm may be, may have been or may become involved in transactions and assignments with these clients and counterparties that are unrelated to this engagement.

The firm maintains information barriers between its investment banking business and merchant banking business (the "private side") and its sales and trading and investment management businesses (the "public side"), and within certain of these businesses. These barriers are subject to surveillance by our Compliance Division and examination by our regulators. In the course of an investment banking assignment, if market judgments are needed from an individual on the public side, including judgments relating to financing, hedging or market reaction, that individual may need to be wall crossed and monitored by our Compliance Division pursuant to specific compliance procedures and restrictions. The ability to obtain such judgments enables us to provide our investment banking clients with sophisticated advice. Firm employees, officers and directors may have investments in funds or in personal accounts that may include or invest in the Target's equity, debt, loans, derivatives and/or other financial instruments as well as those of other persons or entities involved in this potential transaction.

Investment Banking Division: As the leading global M&A advisor, and leading underwriter with extensive capital markets expertise, we advise, finance, sell businesses to and represent competitors to, many major participants in your sector. Our experience and our work as a full service bank give us unique industry knowledge, transactional expertise and market judgment that will allow us to continue to provide sophisticated advice and execution excellence to EM in connection with this engagement.

We may have provided, may currently be providing and may in the future provide, investment banking services that are unrelated to this engagement to potential persons or entities which may be involved in the potential transaction and their respective affiliates and portfolio companies. As is typical for investment banks, we also maintain active marketing and client service dialogues with various participants, and you should assume that, in connection with these dialogues, we may have reviewed various potential combinations with EM and/or potential counterparties to your transaction.

The firm's investment banking business provides term and revolving credit facilities and lines of credit to its clients and also acts as a commercial paper dealer. The proceeds of such credit facilities, lines of credit and commercial paper (including any amendments, extensions or refinancings thereof) may be used in connection with EM's potential transaction in circumstances where either (i) GS is fulfilling a preexisting funding commitment or (ii) at the time of entering into any such funding commitment or placing or purchasing commercial

Elon Musk
August 17, 2018
Page 7

paper, GS has no knowledge that the use of proceeds would be specifically used in connection with the transaction.

Securities Division: GS, like other full service banks and brokerage firms, has a Securities Division that operates on the public side of the wall, engages in market making, securities lending and related activities, including by acting either as an agent for buyers and sellers by executing their orders in the market or as a principal supplying liquidity directly to market participants, and also engages in principal investing and lending activities. Market making includes prudent risk management, which would involve hedging and managing inventory, in both cash and derivative instruments. As a result of these activities, GS, like other brokerage firms, may trade and have positions in the Target's equity, debt, loans, derivatives and/or other financial instruments as well as those of other persons or entities involved in EM's potential transaction or in the same sector, or that otherwise relate to EM's potential transaction. GS assists in raising capital for funds managed by third parties that also may hold or acquire such positions (in which funds GS may, directly or indirectly, have investments, earn performance-based and other fees or otherwise have an economic interest). Any of these positions may change over time and the engagement contemplated by this letter may have a direct or indirect impact on these positions. Moreover, the funds described above may be a potential buyer of assets of EM (or any business of EM) or assets which the Target may be selling or a potential seller of assets EM (or any business of EM) or the Target may be interested in buying. The firm's investment banking division may receive internal credit for sourcing and/or assisting in the execution of certain investments and positions held by the Securities Division.

Global Investment Research Division: The Global Investment Research Division (consistent with other brokerage firms) operates on the public side of the wall, independently from the Investment Banking Division, the Securities Division and the rest of the firm. There are laws and/or firm policies that govern (and may permit) the publication of research, including in connection with an offering being underwritten by the firm or a material strategic transaction in which the firm is involved, and that prevent the Investment Banking Division from influencing or interfering with the views of the Global Investment Research Division.

Investment Management Division: GS's Investment Management Division consists of Goldman Sachs Asset Management (GSAM) and Private Wealth Management (PWM).

GSAM manages mutual funds, hedge funds, private equity funds, funds of funds and similar accounts, and provides other asset management services and investment advice on behalf of its clients. These funds and accounts invest in public and private equity, debt, loans, derivatives and other financial instruments, and the size of positions they own change over time. GSAM-managed funds also make passive investments in sponsors and management companies of third-party alternative asset management firms (including private equity firms and hedge funds), in the funds which they sponsor and manage, and in portfolio companies in which they invest (collectively such sponsors and managers, funds and portfolio companies are referred to as "Sponsor Entities"). The Sponsor Entities may be a participant in some capacity, including as a buyer, seller or financing source, in any transaction for which EM has retained GS as an advisor. The financial instruments described in this paragraph may have voting or other rights associated with them. GS earns management

Elon Musk
August 17, 2018
Page 8

and performance-based fees from the funds and accounts GSAM manages, and GS and GS employees may invest in these funds.

GSAM is managed as a separate business unit from the rest of the firm with its own operating, control, compliance and risk management infrastructure. Stringent regulatory, informational, and operational barriers separate GSAM from PWM and the Investment Banking, Merchant Banking, and Securities Divisions.

Portfolio managers in GSAM frequently have discretion over client assets and are required to fulfill a fiduciary responsibility to their investors in making decisions to purchase, sell, hold or vote, or take any other action with respect to, any financial instrument. As a matter of law and firm policy, the Investment Banking Division may not influence or interfere with those decisions.

PWM is a business unit operating within the Investment Management Division that operates on the public side of the wall. PWM engages in brokerage, investment advisory services, personal trust services and private banking services (including taking deposits and making loans) primarily for high net worth clients, their family entities and small institutions. PWM may have discretion over client assets with respect to the purchase or sale of any financial instrument.

PWM earns brokerage commissions, advisory fees, fiduciary trust fees and lending fees and interest from its clients. PWM assists in raising capital for private equity and hedge funds managed by GSAM as well as by third-party fund managers, and GS and GS employees may invest in these new funds. PWM may also enter into revolving credit facilities for private equity firms and hedge funds to provide temporary funds to cover unfunded capital calls. In addition, PWM through its private banking business also makes committed and demand loans to individuals, family entities and businesses for individual, household and business purposes.

The private equity or hedge funds for whom PWM raises capital or enters into capital call facilities, and the individuals and other clients to whom PWM provides loans, may be a participant in some capacity, including as a buyer, seller or financing source, in any transaction for which EM has retained GS as an advisor, and may use the proceeds of such credit facilities or loans in connection with the transaction.

Although GS in the course of such other activities and relationships may acquire information about the transaction contemplated by this letter or other entities and persons which may be the subject of the engagement contemplated by this letter, GS shall have no obligation to disclose such information, any other non-public information which is otherwise subject to an obligation of confidence to another person, or the fact that GS is in possession of such information, to EM or to use such information on EM's behalf.