

TESLA MOTORS INC

FORM 8-K (Current report filing)

Filed 11/21/16 for the Period Ending 11/21/16

Address	3500 DEER CREEK RD PALO ALTO, CA 94070
Telephone	650-681-5000
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SIC Code	3711 - Motor Vehicles and Passenger Car Bodies
Industry	Auto & Truck Manufacturers
Sector	Consumer Cyclical
Fiscal Year	12/31

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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): November 21, 2016

TESLA MOTORS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34756
(Commission
File Number)

91-2197729
(IRS Employer
Identification No.)

3500 Deer Creek Road
Palo Alto, California 94304
(Address of principal executive offices)

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

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Introductory Note

On November 21, 2016 (the “Closing Date”), upon the terms and subject to the conditions set forth in the Agreement and Plan of Merger (the “Merger Agreement”), dated as of July 31, 2016, among Tesla Motors, Inc. (“Tesla”), SolarCity Corporation (“SolarCity”) and D Subsidiary, Inc., a wholly owned subsidiary of Tesla (“Merger Sub”), and in accordance with applicable law, Merger Sub merged with and into SolarCity (the “Merger”), with SolarCity surviving the Merger as a wholly owned subsidiary of Tesla.

Item 1.01. Entry into a Material Definitive Agreement.

In connection with the completion of the Merger, SolarCity entered into supplemental indentures (collectively, the “Supplemental Indentures”) with respect to each of (i) the Indenture, dated as of October 21, 2013, between SolarCity and Wells Fargo Bank, National Association, as trustee, governing SolarCity’s 2.75% Convertible Senior Notes due 2018, (ii) the Indenture, dated as of September 30, 2014, between SolarCity and Wells Fargo Bank, National Association, as trustee, governing SolarCity’s 1.625% Convertible Senior Notes due 2019, and (iii) the Indenture, dated as of December 7, 2015, between SolarCity and Wells Fargo Bank, National Association, as trustee, governing SolarCity’s Zero Coupon Convertible Senior Notes due 2020. The Supplemental Indentures provide that, following the consummation of the Merger, the holders of SolarCity’s convertible notes will have the right to convert each \$1,000 of principal amount of their convertible notes into, in lieu of SolarCity Common Stock (as defined below), the number of shares of Tesla Common Stock (as defined below) that a holder of a number of shares of SolarCity Common Stock equal to the conversion rate immediately prior to the effective time of the Merger would have been entitled to receive upon consummation of the Merger.

The foregoing description of the Supplemental Indentures does not purport to be complete and is qualified in its entirety by reference to the Supplemental Indentures, which are included as Exhibits 4.1, 4.2 and 4.3 hereto and incorporated into this Item 1.01 by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

As described above, on the Closing Date, Tesla completed its previously announced acquisition of SolarCity. As a result of the Merger, SolarCity became a wholly owned subsidiary of Tesla.

Under the terms of the Merger Agreement, at the effective time of the Merger (the “Effective Time”), each share of SolarCity common stock, par value \$0.0001 per share (the “SolarCity Common Stock”), issued and outstanding immediately prior to the Effective Time (other than shares of SolarCity Common Stock owned by SolarCity as treasury stock or owned by Tesla or Merger Sub, which were cancelled) was converted into the right to receive 0.110 (the “Exchange Ratio”) shares of Tesla common stock, par value \$0.001 per share (the “Tesla Common Stock”). No fractional shares of Tesla Common Stock were issued in the Merger, and SolarCity stockholders became entitled to receive cash in lieu of any fractional shares.

At the Effective Time, SolarCity options and SolarCity restricted stock unit awards were converted into corresponding equity awards in respect of Tesla Common Stock based on the Exchange Ratio, with the awards retaining the same vesting and other terms and conditions as in effect immediately prior to consummation of the Merger (except for certain founder options granted in 2015, which were cancelled for no consideration).

Upon the closing of the Merger, the shares of SolarCity Common Stock, which previously traded under the ticker symbol “SCTY” on the NASDAQ Stock Market (the “NASDAQ”), have ceased trading on, and were delisted from, the NASDAQ.

The foregoing description of the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which was attached as Exhibit 2.1 to Tesla’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on August 1, 2016, and is incorporated herein by reference.

Item 8.01. Other Events.

Tesla is registering an aggregate of 2,055,067 shares of Tesla Common Stock on Tesla's Registration Statement on Form S-3 (File No. 333-211437) (the "Registration Statement"), as supplemented by two prospectus supplements, each dated as of November 21, 2016, and to be filed with the SEC on November 21, 2016 (collectively, the "Registrations"). One prospectus supplement relates to 2,009,288 shares of Tesla Common Stock issuable to holders of SolarCity's 2.75% Convertible Senior Notes due 2018, 1.625% Convertible Senior Notes due 2019 and Zero Coupon Convertible Senior Notes due 2020 upon conversion thereof. The second prospectus supplement relates to 45,779 shares of Tesla Common Stock issuable in respect of certain options held by former employees of SolarCity (or their respective legal successors) under the SolarCity Corporation 2012 Equity Incentive Plan and the SolarCity Corporation 2007 Stock Plan, which were assumed by Tesla in the Merger.

In connection with the Registrations, the legal opinions as to the legality of the Tesla Common Stock being registered are being filed as Exhibit 5.1 and Exhibit 5.2 to this Current Report on Form 8-K and are incorporated herein and into the Registration Statement by reference.

On November 21, 2016, Tesla released a press statement announcing the completion of the Merger, which is included as Exhibit 99.1 hereto and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

Tesla intends to file the financial statements of SolarCity required by Item 9.01(a) as part of an amendment to this Current Report on Form 8-K or otherwise not later than 71 calendar days after the date of this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

Tesla intends to file the pro forma financial information required by Item 9.01(b) as part of an amendment to this Current Report on Form 8-K or otherwise not later than 71 calendar days after the date of this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

**Exhibit
No.****Exhibit Description**

2.1*	Agreement and Plan of Merger, dated as of July 31, 2016, among Tesla Motors, Inc., SolarCity Corporation and D Subsidiary, Inc. (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Tesla with the SEC on August 1, 2016).
4.1	First Supplemental Indenture, dated as of November 21, 2016, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee to the Indenture, dated as of October 21, 2013, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee.
4.2	First Supplemental Indenture, dated as of November 21, 2016, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee to the Indenture, dated as of September 30, 2014, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee.
4.3	First Supplemental Indenture, dated as of November 21, 2016, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee to the Indenture, dated as of December 7, 2015, between SolarCity Corporation and Wells Fargo Bank, National Association, as trustee.
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, relating to the registration of up to 2,009,288 shares.
5.2	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, relating the registration of up to 45,779 shares.

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- 23.1 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1 and Exhibit 5.2 hereto).
 - 23.2 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.2 hereto).
 - 99.1 Press Statement, released November 21, 2016.

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Tesla hereby undertakes to supplementally furnish copies of any of the omitted schedules upon request by the SEC.

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.

TESLA MOTORS, INC.

Date: November 21, 2016

By: /s/ Todd A. Maron

Name: Todd A. Maron

Title: General Counsel

EXHIBIT INDEX

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FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE dated as of November 21, 2016 among SolarCity Corporation, a Delaware corporation (the “**Company**”), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, as trustee under the Indenture referred to below (the “**Trustee**”).

WITNESSETH:

WHEREAS, the Company and the Trustee are parties to an Indenture, dated as of October 21, 2013 (the “**Indenture**” and together with this First Supplemental Indenture, the “**Supplemented Indenture**”), pursuant to which the Issuer issued its 2.75% Convertible Senior Notes due 2018 (the “**Securities**”);

WHEREAS, the Company entered into an Agreement and Plan of Merger and Reorganization, dated as of July 31, 2016 (the “**Merger Agreement**”), by and among Tesla Motors, Inc. (“**Tesla**”), the Company and D Subsidiary, Inc. (“**Merger Sub**”), a wholly-owned subsidiary of Tesla;

WHEREAS, pursuant to the Merger Agreement and subject to the terms and conditions therein, Merger Sub will merge with and into the Company (the “**Merger**”), and the Company will continue as the surviving corporation in the Merger and a wholly-owned subsidiary of Tesla;

WHEREAS, pursuant to the Merger Agreement and subject to the terms and conditions therein, at the effective time of the Merger, each share of common stock, par value \$0.0001 per share, of the Company (the “**SolarCity Common Stock**”) issued and outstanding immediately prior to the effective time of the Merger, will be converted into the right to receive 0.110 shares of common stock, par value \$0.001, of Tesla (the “**Tesla Common Stock**”);

WHEREAS, Section 10.15(a) of the Indenture provides that upon the occurrence of any consolidation, merger, or combination involving the Company, as a result of which the SolarCity Common Stock would be converted into, or exchanged for, cash, securities or other property or assets (a “**Merger Event**”), then the Company shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) which shall provide that Holders shall be entitled thereafter to convert their Securities into the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the “**Reference Property**”) upon such transaction; provided that, at and after the effective time of any such transaction, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture.

WHEREAS, pursuant to Section 9.01 of the Indenture, the Company and the Trustee may enter into indentures supplemental to the Indenture for the purpose of, among other things, making provisions with respect to the conversion rights of the Holders in accordance with Section 10.15 of the Indenture in connection with any Merger Event;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officers’ Certificate and an Opinion of Counsel as contemplated by Section 9.06, 12.04 and 12.05 of the Indenture; and

WHEREAS, the Company and Tesla have requested that the Trustee execute and deliver this Supplemental Indenture and have satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 *Definitions in the Supplemental Indenture*. A term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless such term is otherwise defined herein or amended or supplemented pursuant to this Supplemental Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

EFFECT OF MERGER ON CONVERSION RIGHT

Section 2.01 *Convert Right*. The Company expressly agrees that, in accordance with Section 10.15(a) of the Indenture, each Holder of Securities shall hereafter be entitled to convert, subject to the provisions of Section 10.15(c) of the Indenture, each \$1,000 principal amount of such Securities for, in lieu of shares of SolarCity Common Stock, the number of shares of Tesla Common Stock that a Holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to the effective time of the Merger would have been entitled to receive upon the Merger; provided that, at and after the effective time of the Merger, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture. For purposes of this Supplemental Indenture, “Reference Property” and “unit of Reference Property”, as defined in the Indenture, means Tesla Common Stock and 0.110 shares of Tesla Common Stock, respectively, and the initial Conversion Rate immediately following the Merger will be 1.7838 shares of Tesla Common Stock.

Section 2.02 Indenture Remains in Full Force and Effect. Except as supplemented hereby, all provisions in the Indenture shall remain in full force and effect.

Section 2.03 Trustee Matters. The Trustee accepts the Indenture, as supplemented hereby, and agrees to perform the same upon the terms and conditions set forth therein, as supplemented hereby. The Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, whether or not elsewhere herein so provided. The recitals contained in this Supplemental Indenture shall be taken as the statements of the Company and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 2.04 No Third-Party Beneficiaries. Nothing in this Supplemental Indenture, express or implied, shall give to any Person, other than the parties to the Indenture, as supplemented hereby, and their successors, and to the Holders of the Notes, any benefit of any legal or equitable right, remedy or claim under the Indenture, as supplemented hereby.

ARTICLE 3

MISCELLANEOUS

Section 3.01 *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this First Supplemental Indenture. This First Supplemental Indenture is executed and accepted by the Trustee subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee with respect hereto.

Section 3.02 *The Trustee*. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

Section 3.03 *Governing Law*. THIS SUPPLEMENTAL INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE COMPANY, THE HOLDERS BY THEIR ACCEPTANCE OF THE SECURITIES AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.04 *Counterparts* . This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

SOLARCITY CORPORATION, as Company

By: /s/ Lyndon R. Rive

Name: Lyndon R. Rive

Title: Chief Executive Officer

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Trustee**

By: /s/ Maddy Hughes

Name: Maddy Hughes

Title: Vice President

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE dated as of November 21, 2016 among SolarCity Corporation, a Delaware corporation (the “**Company**”), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, as trustee under the Indenture referred to below (the “**Trustee**”).

WITNESSETH:

WHEREAS, the Company and the Trustee are parties to an Indenture, dated as of September 30, 2014 (the “**Indenture**” and together with this First Supplemental Indenture, the “**Supplemented Indenture**”), pursuant to which the Issuer issued its 1.625% Convertible Senior Notes due 2019 (the “**Securities**”);

WHEREAS, the Company entered into an Agreement and Plan of Merger and Reorganization, dated as of July 31, 2016 (the “**Merger Agreement**”), by and among Tesla Motors, Inc. (“**Tesla**”), the Company and D Subsidiary, Inc. (“**Merger Sub**”), a wholly-owned subsidiary of Tesla;

WHEREAS, pursuant to the Merger Agreement and subject to the terms and conditions therein, Merger Sub will merge with and into the Company (the “**Merger**”), and the Company will continue as the surviving corporation in the Merger and a wholly-owned subsidiary of Tesla;

WHEREAS, pursuant to the Merger Agreement and subject to the terms and conditions therein, at the effective time of the Merger, each share of common stock, par value \$0.0001 per share, of the Company (the “**SolarCity Common Stock**”) issued and outstanding immediately prior to the effective time of the Merger, will be converted into the right to receive 0.110 shares of common stock, par value \$0.001, of Tesla (the “**Tesla Common Stock**”);

WHEREAS, Section 10.15(a) of the Indenture provides that upon the occurrence of any consolidation, merger, or combination involving the Company, as a result of which the SolarCity Common Stock would be converted into, or exchanged for, cash, securities or other property or assets (a “**Merger Event**”), then the Company shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) which shall provide that Holders shall be entitled thereafter to convert their Securities into the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the “**Reference Property**”) upon such transaction; provided that, at and after the effective time of any such transaction, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture.

WHEREAS, pursuant to Section 9.01 of the Indenture, the Company and the Trustee may enter into indentures supplemental to the Indenture for the purpose of, among other things, making provisions with respect to the conversion rights of the Holders in accordance with Section 10.15 of the Indenture in connection with any Merger Event;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officers’ Certificate and an Opinion of Counsel as contemplated by Section 9.06, 12.04 and 12.05 of the Indenture; and

WHEREAS, the Company and Tesla have requested that the Trustee execute and deliver this Supplemental Indenture and have satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 *Definitions in the Supplemental Indenture*. A term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless such term is otherwise defined herein or amended or supplemented pursuant to this Supplemental Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

EFFECT OF MERGER ON CONVERSION RIGHT

Section 2.01 *Convert Right*. The Company expressly agrees that, in accordance with Section 10.15(a) of the Indenture, each Holder of Securities shall hereafter be entitled to convert, subject to the provisions of Section 10.15(c) of the Indenture, each \$1,000 principal amount of such Securities for, in lieu of shares of SolarCity Common Stock, the number of shares of Tesla Common Stock that a Holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to the effective time of the Merger would have been entitled to receive upon the Merger; provided that, at and after the effective time of the Merger, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture. For purposes of this Supplemental Indenture, “Reference Property” and “unit of Reference Property”, as defined in the Indenture, means Tesla Common Stock and 0.110 shares of Tesla Common Stock, respectively, and the initial Conversion Rate immediately following the Merger will be 1.3169 shares of Tesla Common Stock.

Section 2.02 Indenture Remains in Full Force and Effect. Except as supplemented hereby, all provisions in the Indenture shall remain in full force and effect.

Section 2.03 Trustee Matters. The Trustee accepts the Indenture, as supplemented hereby, and agrees to perform the same upon the terms and conditions set forth therein, as supplemented hereby. The Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, whether or not elsewhere herein so provided. The recitals contained in this Supplemental Indenture shall be taken as the statements of the Company and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 2.04 No Third-Party Beneficiaries. Nothing in this Supplemental Indenture, express or implied, shall give to any Person, other than the parties to the Indenture, as supplemented hereby, and their successors, and to the Holders of the Notes, any benefit of any legal or equitable right, remedy or claim under the Indenture, as supplemented hereby.

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MISCELLANEOUS

Section 3.01 *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this First Supplemental Indenture. This First Supplemental Indenture is executed and accepted by the Trustee subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee with respect hereto.

Section 3.02 *The Trustee*. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

Section 3.03 *Governing Law*. THIS SUPPLEMENTAL INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE COMPANY, THE HOLDERS BY THEIR ACCEPTANCE OF THE SECURITIES AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.04 *Counterparts* . This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

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IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

SOLARCITY CORPORATION, as Company

By: /s/ Lyndon R. Rive

Name: Lyndon R. Rive

Title: Chief Executive Officer

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Trustee**

By: /s/ Maddy Hughes

Name: Maddy Hughes

Title: Vice President

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WITNESSETH:

WHEREAS, the Company and the Trustee are parties to an Indenture, dated as of December 7, 2015 (the “**Indenture**” and together with this First Supplemental Indenture, the “**Supplemented Indenture**”), pursuant to which the Issuer issued its Zero Coupon Convertible Senior Notes due 2020 (the “**Securities**”);

WHEREAS, the Company entered into an Agreement and Plan of Merger and Reorganization, dated as of July 31, 2016 (the “**Merger Agreement**”), by and among Tesla Motors, Inc. (“**Tesla**”), the Company and D Subsidiary, Inc. (“**Merger Sub**”), a wholly-owned subsidiary of Tesla;

WHEREAS, pursuant to the Merger Agreement and subject to the terms and conditions therein, Merger Sub will merge with and into the Company (the “**Merger**”), and the Company will continue as the surviving corporation in the Merger and a wholly-owned subsidiary of Tesla;

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WHEREAS, Section 10.15(a) of the Indenture provides that upon the occurrence of any consolidation, merger, or combination involving the Company, as a result of which the SolarCity Common Stock would be converted into, or exchanged for, cash, securities or other property or assets (a “**Merger Event**”), then the Company shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) which shall provide that Holders shall be entitled thereafter to convert their Securities into the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the “**Reference Property**”) upon such transaction; provided that, at and after the effective time of any such transaction, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture.

WHEREAS, pursuant to Section 9.01 of the Indenture, the Company and the Trustee may enter into indentures supplemental to the Indenture for the purpose of, among other things, making provisions with respect to the conversion rights of the Holders in accordance with Section 10.15 of the Indenture in connection with any Merger Event;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officers’ Certificate and an Opinion of Counsel as contemplated by Section 9.06, 12.04 and 12.05 of the Indenture; and

WHEREAS, the Company and Tesla have requested that the Trustee execute and deliver this Supplemental Indenture and have satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 *Definitions in the Supplemental Indenture* . A term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless such term is otherwise defined herein or amended or supplemented pursuant to this Supplemental Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

EFFECT OF MERGER ON CONVERSION RIGHT

Section 2.01 *Convert Right* . The Company expressly agrees that, in accordance with Section 10.15(a) of the Indenture, each Holder of Securities shall hereafter be entitled to convert, subject to the provisions of Section 10.15(c) of the Indenture, each \$1,000 principal amount of such Securities for, in lieu of shares of SolarCity Common Stock, the number of shares of Tesla Common Stock that a Holder of a number of shares of SolarCity Common Stock equal to the Conversion Rate immediately prior to the effective time of the Merger would have been entitled to receive upon the Merger; provided that, at and after the effective time of the Merger, any amount otherwise payable in cash for fractional shares of Common Stock upon conversion of the Securities will continue to be payable as described in Section 10.03 of the Indenture. For purposes of this Supplemental Indenture, “Reference Property” and “unit of Reference Property”, as defined in the Indenture, means Tesla Common Stock and 0.110 shares of Tesla Common Stock, respectively, and the initial Conversion Rate immediately following the Merger will be 3.3333 shares of Tesla Common Stock.

Section 2.02 Indenture Remains in Full Force and Effect . Except as supplemented hereby, all provisions in the Indenture shall remain in full force and effect.

Section 2.03 Trustee Matters . The Trustee accepts the Indenture, as supplemented hereby, and agrees to perform the same upon the terms and conditions set forth therein, as supplemented hereby. The Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, whether or not elsewhere herein so provided. The recitals contained in this Supplemental Indenture shall be taken as the statements of the Company and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 2.04 No Third-Party Beneficiaries . Nothing in this Supplemental Indenture, express or implied, shall give to any Person, other than the parties to the Indenture, as supplemented hereby, and their successors, and to the Holders of the Notes, any benefit of any legal or equitable right, remedy or claim under the Indenture, as supplemented hereby.

ARTICLE 3

MISCELLANEOUS

Section 3.01 *Ratification of Indenture* . The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this First Supplemental Indenture. This First Supplemental Indenture is executed and accepted by the Trustee subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee with respect hereto.

Section 3.02 *The Trustee* . The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company.

Section 3.03 *Governing Law* . THIS SUPPLEMENTAL INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE COMPANY, THE HOLDERS BY THEIR ACCEPTANCE OF THE SECURITIES AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.04 *Counterparts* . This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

SOLARCITY CORPORATION, as Company

By: /s/ Lyndon R. Rive

Name: Lyndon R. Rive

Title: Chief Executive Officer

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Trustee**

By: /s/ Maddy Hughes

Name: Maddy Hughes

Title: Vice President

[Wilson Sonsini Goodrich & Rosati Letterhead]

November 21, 2016

Tesla Motors, Inc.
3500 Deer Creek Road,
Palo Alto, California 94304

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Tesla Motors, Inc., a Delaware corporation (the "Company"), in connection with the filing by the Company with the Securities and Exchange Commission (the "Commission") on May 18, 2016 of a registration statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Act"), that is automatically effective under the Act pursuant to Rule 462(e) promulgated thereunder. The Registration Statement relates to, among other things, the proposed issuance and sale, from time to time, by the Company of debt securities (the "Debt Securities") and shares of the Company's common stock (the "Common Stock"), \$0.001 par value per share, each with an indeterminate amount as may at various times be issued at indeterminate prices, in reliance on Rule 456(b) and Rule 457(r) under the Act. The Debt Securities and the Common Stock are to be sold from time to time as set forth in the Registration Statement, the prospectus contained therein, and the supplements to the prospectus.

Pursuant to the Registration Statement, the Company is registering up to 2,009,288 shares (the "Shares") of the Company's Common Stock issuable upon conversion of (i) the 2.75% Convertible Senior Notes due 2018 (the "2018 Notes") issued pursuant to the Indenture, dated as of October 21, 2013, between SolarCity Corporation ("SolarCity") and Wells Fargo Bank, National Association (the "Trustee"), as amended pursuant to the First Supplemental Indenture, dated as of the date hereof (as so amended, the "2018 Indenture"); (ii) the 1.625% Convertible Senior Notes due 2019 (the "2019 Notes") issued pursuant to the Indenture, dated as of September 30, 2014, between SolarCity and the Trustee, as amended pursuant to the First Supplemental Indenture, dated as of the date hereof (as so amended, the "2019 Indenture"); and (iii) the Zero Coupon Convertible Senior Notes due 2020 (together with the 2018 and 2019 Notes, the "Notes") issued pursuant to the Indenture, dated as of December 7, 2015, between SolarCity and the Trustee, as amended pursuant to the First Supplemental Indenture, dated as of the date hereof (as so amended and, together with the 2018 Indenture and the 2019 Indenture, the "Indentures").

We have examined the Registration Statement, together with the exhibits thereto and the documents incorporated by reference therein; the prospectus, dated May 18, 2016, together with the documents incorporated by reference therein, filed with the Registration Statement (the "Prospectus"); and the prospectus supplement, dated November 21, 2016, in the form to be filed with the Commission pursuant to Rule 424(b) of the Securities Act relating to the Shares (together with the Prospectus, the "Prospectus Supplement"); the Indentures and the Notes. In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such other instruments, documents, certificates and records which we have deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed; (iv) that each of SolarCity and the Trustee has the power, corporate or otherwise, to perform its obligations under each

applicable Indenture and that each applicable Indenture is a valid and binding obligation of SolarCity and the Trustee; and (v) the legal capacity of all natural persons. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

We express no opinion herein as to the laws of any state or jurisdiction, other than the Federal laws of the United States of America and the General Corporation Law of the State of Delaware (the "DGCL"), as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.

We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, (ii) rights to indemnification and contribution which may be limited by applicable law or equitable principles, or (iii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the effect of judicial discretion and the possible unavailability of specific performance, injunctive relief or other equitable relief, and the limitations on rights of acceleration, whether considered in a proceeding in equity or at law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when the applicable conversion right has been duly exercised in accordance with the terms of the applicable Notes and the applicable Indenture, and the Shares have been issued and delivered upon such conversion in accordance with the terms of the applicable Notes and the applicable Indenture, the Shares will be validly issued, fully paid and nonassessable.

* * *

We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Prospectus, Prospectus Supplement, and in any amendment or supplement thereto. In giving such consent, we do not believe that we are “experts” within the meaning of such term as used in the Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

[Wilson Sonsini Goodrich & Rosati Letterhead]

November 21, 2016

Tesla Motors, Inc.
3500 Deer Creek Road,
Palo Alto, California 94304

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Tesla Motors, Inc., a Delaware corporation (the "Company"), in connection with the filing by the Company with the Securities and Exchange Commission (the "Commission") on May 18, 2016 of a registration statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Act"), that is automatically effective under the Act pursuant to Rule 462(e) promulgated thereunder. The Registration Statement relates to, among other things, the proposed issuance and sale, from time to time, by the Company of debt securities (the "Debt Securities") and shares of the Company's common stock (the "Common Stock"), \$0.001 par value per share, each with an indeterminate amount as may at various times be issued at indeterminate prices, in reliance on Rule 456(b) and Rule 457(r) under the Act. The Debt Securities and the Common Stock are to be sold from time to time as set forth in the Registration Statement, the prospectus contained therein, and the supplements to the prospectus.

Pursuant to the Registration Statement, the Company is registering up to an aggregate of 45,779 shares (the "Shares") of the Company's Common Stock, including (i) 150 shares of the Company's Common Stock reserved for issuance pursuant to certain equity awards outstanding under the 2007 Stock Plan (the "2007 Plan") of SolarCity Corporation, a Delaware corporation ("SolarCity"), and (ii) 45,629 shares of the Company's Common Stock reserved for issuance pursuant to certain equity awards outstanding under the 2012 Equity Incentive Plan of SolarCity (the "2012 Plan" and, together with the 2007 Plan, the "Plans").

We have examined the Registration Statement, together with the exhibits thereto and the documents incorporated by reference therein; the prospectus, dated May 18, 2016, together with the documents incorporated by reference therein, filed with the Registration Statement (the "Prospectus"); the prospectus supplement, dated November 21, 2016, in the form to be filed with the Commission pursuant to Rule 424(b) of the Securities Act relating to the Shares (together with the Prospectus, the "Prospectus Supplement"); and the Plans and the forms of agreement that accompany the Plans. In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such other instruments, documents, certificates and records which we have deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed; and (iv) the legal capacity of all natural persons. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

We express no opinion herein as to the laws of any state or jurisdiction, other than the Federal laws of the United States of America and the General Corporation Law of the State of Delaware (the

“DGCL”), as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.

We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, (ii) rights to indemnification and contribution which may be limited by applicable law or equitable principles, or (iii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the effect of judicial discretion and the possible unavailability of specific performance, injunctive relief or other equitable relief, and the limitations on rights of acceleration, whether considered in a proceeding in equity or at law.

Based on the foregoing, we are of the opinion that the Shares, when issued and sold in the manner referred to in the Plans and pursuant to the agreements that accompany the Plans, will be legally and validly issued, fully paid and nonassessable.

* * *

We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Prospectus, Prospectus Supplement, and in any amendment or supplement thereto. In giving such consent, we do not believe that we are “experts” within the meaning of such term as used in the Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

We're pleased to announce that Tesla's acquisition of SolarCity closed this morning.