



PRIVATE & CONFIDENTIAL

MUTUAL NON-DISCLOSURE AGREEMENT

10 Aug 2018

Tesla
3500 Deer Creek Road
Palo Alto, CA 94304

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case Number: 3:18-cv-04865-EMC
PLTF / DEFT Exhibit No. 333
Date Admitted:
By:
Angella Meuleman, Deputy Clerk

Dear Sirs,

Reference to a potential project (the "Potential Project").

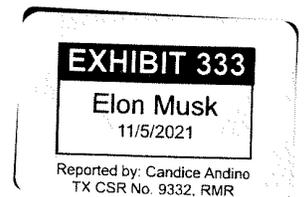
This mutual non-disclosure letter agreement is made by and between the Public Investment Fund ("PIF"), and Tesla the ("Company") (each, a "Party"; and collectively, the "Parties").

In connection with the Potential Project, each Party desires to obtain certain Confidential Information from the other Party and its Affiliates (such Party, when receiving such information, being the "Receiving Party" and when disclosing such information, being the "Disclosing Party") (all capitalised terms are as hereinafter defined). In consideration of the mutual covenants set forth herein, the Parties hereby agree as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 In this letter agreement, unless the context otherwise requires:

- (a) "Affiliate" means, in relation to a body corporate, any subsidiary or holding company of such body corporate, and any subsidiary of any such holding company, in each case from time to time;
(b) "Confidential Information" means:
(i) all business, technical, financial, operational, administrative, legal, economic and other information in whatever form (including in written, oral, visual or electronic form) relating to the Disclosing Party and its Affiliates that is directly or indirectly disclosed, whether before, on or after the date of this letter agreement, to Receiving Party or any of its Representatives, by the Disclosing Party or any of its Representatives or which comes to Receiving Party's attention in connection with the Potential Project;
(ii) all information in whatever form (including in written, oral, visual or electronic form) relating to the existence, status or progress of the Potential Project including the existence and contents of this letter agreement and the fact that discussions and negotiations may be taking place in relation to the Potential Project; and
(iii) All documents that contain or reflect or are generated from any of the foregoing and all copies of any of the foregoing,





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- (c) **“Representatives”** means, in relation to a party, its Affiliates and their respective directors, officers, partners, members, employees, agents, consultants, and advisers;
- (d) references to a “person” includes any individual, partnership, body corporate, corporation sole or aggregate, state or agency of a state, and any unincorporated association or organisation, in each case whether or not having separate legal personality;
- (e) Words introduced by the word “other” shall not be given a restrictive meaning because they are preceded by words referring to a particular class of acts, matters or things; and
- (f) General words shall not be given a restrictive meaning because they are followed by words which are particular examples of the acts, matters or things covered by the general words and the words “includes” and “including” shall be construed without limitation.

2. DUTY OF CONFIDENTIALITY

- 2.1 The Receiving Party will hold the Confidential Information in strict confidence and will not disclose, reproduce or distribute any Confidential Information in whole or in part, directly or indirectly, (or permit any of the foregoing) to any persons, other than to its Representatives to the extent that such disclosure, reproduction or distribution is strictly necessary for the purposes of the Potential Project.
- 2.2 Neither the Receiving Party nor any of its Representatives will, without the Disclosing Party’s prior written consent use any Confidential Information for any purpose other than the Potential Project or make, permit or assist any other person to make any public announcement in relation to the Potential Project.
- 2.3 The undertakings given by the Parties in this letter agreement are given on the Parties own behalf. The Parties shall ensure that each of their Representatives is informed of the terms of this letter agreement and the Parties shall procure that each of their Representatives adheres to the terms of this letter agreement as if it had entered into this letter agreement in its place (notwithstanding that it is not a party hereto) and the Parties will be responsible to the extent that any of their Representatives does not do so.

3. PERMITTED DISCLOSURE

- 3.1 Confidential Information shall not include information that the Receiving Party can establish by competent evidence:
 - (a) is, at the time of disclosure to the Receiving Party or one of its Representatives, or subsequently becomes, publicly available (other than as a direct or indirect result of the information being disclosed in breach of this letter agreement) and could be obtained by any person with no more than reasonable diligence;
 - (b) was known to the Receiving Party or one of its Representatives before the date of this letter agreement and such person was not under any obligation of confidence in respect of that information; or



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(c) The Receiving Party or one of its Representatives found out from a source not connected to the Disclosing Party or any of its Representatives and which is not under any obligation of confidence in respect of that information.

3.2 The undertakings in this letter agreement will not apply to any disclosure of Confidential Information that is required by any law or regulation, any stock exchange or competent governmental or regulatory authority or any order of any court of competent jurisdiction.

4. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

Where either Party determines that it does not wish to proceed with the Potential Project, the Receiving Party and each of its Representatives will, upon the written request of the Disclosing Party, destroy or return to the Disclosing Party (at the Receiving Party's election) any documents containing Confidential Information *provided* that the Receiving Party and its Representatives shall be entitled to retain copies of the Confidential Information for regulatory and/or ordinary record keeping purposes or to demonstrate compliance with applicable law. In the event that the documents are destroyed, upon written request, the Receiving Party shall confirm to the Disclosing Party in writing that such destruction has occurred (subject to the foregoing).

5. GENERAL

5.1 The obligations in this letter shall terminate upon the third anniversary of the date of this letter agreement.

5.2 Neither Party may assign this letter agreement or any of its rights or obligations hereunder without the other Party's prior written consent.

5.3 No variation or amendment of this letter agreement shall be valid unless it is in writing and duly executed by or on behalf of both Parties.

5.4 Any notice or other communication given under this letter agreement or in connection with the matters contemplated herein shall, except where otherwise specifically provided, be in writing in the English language, addressed to the head office of the addressee.

5.5 This letter agreement may be executed in any number of counterparts. Each counterpart shall constitute an original of this letter agreement but all the counterparts together shall constitute but one and the same instrument.

5.6 This letter agreement contains the entire agreement between the Parties regarding the subject matter hereof and shall supersede all written and oral agreements of the Parties entered into with regard to the treatment of Confidential Information.

5.7 This letter agreement shall be governed by and construed in accordance with the laws of the Kingdom of Saudi Arabia and the Parties agree to submit to the exclusive jurisdiction of the courts of the Kingdom of Saudi Arabia.

Please confirm that you agree to the terms set out in this letter agreement by signing and returning to us the enclosed duplicate copy.

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Mutual NDA between the Public Investment Fund and Tesla in relation to Potential Project



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Yours faithfully,

For and on behalf of
THE PUBLIC INVESTMENT FUND

His Excellency Mr. Yasir Al Rumayyan
Managing Director

We acknowledge receipt of this letter agreement and agree to be bound by its terms

For and on behalf of
TESLA

Elon Musk
CEO

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Mutual NDA between the Public Investment Fund and Tesla in relation to Potential Project

FOIA CONFIDENTIAL TREATMENT REQUESTED BY TESLA,
NOT SUBJECT TO DISCLOSURE PURSUANT TO 5 U.S.C. §552(b)
CONFIDENTIAL

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