




## Applicant Non-Disclosure Agreement

This Non-Disclosure Agreement ("NDA") is entered into between Biraj Khatiwada ("Applicant") and Tesla, Inc. together with its subsidiaries and other affiliates ("Tesla").

Tesla and Applicant wish to evaluate a possible employment or independent contractor relationship ("Purpose"). To further this Purpose, Tesla and its affiliates may disclose Confidential Information to Applicant, and Applicant shall protect Confidential Information on the terms set forth below.

1. "Confidential Information" means confidential or proprietary information of Tesla or its affiliates which is disclosed to or perceived by Applicant in any form and which (a) is marked or orally identified as confidential, or (b) under the circumstances Applicant should reasonably understand to be confidential or proprietary.
2. Applicant shall: (a) not disclose such Confidential Information to any third party; (b) not use Confidential Information except for the Purpose; and (c) protect Confidential Information from unauthorized disclosure or use with at least the same degree of care that Applicant uses for its own information of like importance, but not less than reasonable care.
3. Confidential Information will not include information that Applicant can show: (a) was known to Applicant without any confidentiality obligation before Tesla's disclosure; (b) was widely and publicly known in the industry at the time of disclosure; (c) has become widely and publicly known in the industry through no fault of Applicant; (d) is obtained by Applicant from a third party with no confidentiality obligation or use restriction; or (e) is independently developed by Applicant without violation of this NDA and without any reference to or access to the Confidential Information.
4. If Applicant is required by law to disclose any Confidential Information, Applicant shall promptly notify Tesla in writing of the requirement, with sufficient advance notice before any disclosure to give Tesla a reasonable opportunity to obviate the requirement, object to the disclosure, limit the scope of disclosure, and seek an appropriate protective order. Applicant must limit the disclosure, including any re-disclosure, to the maximum extent allowed by law. Nothing herein prevents Applicant from reporting in confidence any potential violations of law to relevant governmental authorities or to a court. Applicant is hereby given notice of the immunity set forth in 18 USC § 1833(b).
5. Tangible copies of Confidential Information are Tesla property, and Applicant shall return them upon Tesla's request.
6. No intellectual property right or license is granted in this NDA, other than the limited use right in Section 2(b).
7. If Tesla substantially prevails in any action brought to enforce this NDA, Tesla will recover its costs of enforcement from Applicant, including reasonable attorney fees. Applicant acknowledges that any breach of this NDA would cause Tesla irreparable harm for which monetary damages would not provide an adequate remedy. In addition to any other available remedies, Tesla will be entitled to temporary and permanent injunctive relief with respect to any breach without proof of actual damages or the posting of bond or other security.
8. This NDA does not constitute or imply any commitment to enter into any employment or business arrangement. Tesla makes no warranty of any kind with respect to its Confidential Information.
9. This NDA is the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings relating thereto. No modification of this NDA will be effective unless made in writing and signed by Applicant and by a Tesla employee who is Vice President-level or higher in Tesla's Human Resources department. If Applicant signs Tesla's Visitor Safety & Non-Disclosure Agreement ("Visitor NDA"), the Visitor NDA will not supersede this NDA, and this NDA shall prevail in the event of any conflict between their terms.
10. This NDA will be governed by the laws of California without regard to its conflict of laws principles and as though fully performed in California. Venue for any action relating to or arising from this NDA will be the state or federal courts in Santa Clara County, California.
11. This NDA is effective as of the earlier of the date set forth below or the earliest date when Applicant received Confidential Information. This NDA will expire 3 years after the date set forth below. Sections 1, 2, 4, 5, 7, 8, 10, 11, and 12 will survive any expiration or termination of this NDA.
12. By signing below, Applicant acknowledges that Applicant has received, has read, and understands this NDA and agrees to be bound by this NDA. If Applicant becomes an employee or contractor of Tesla, any violation of this NDA may result in disciplinary action, up to and including termination. An electronic signature on this NDA will have the same legal effect as a handwritten signature.

Applicant Signature:  Biraj (Dec 1, 2020 14:47 PST)

Date: 12/1/2020

