



## NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Nondisclosure and Confidentiality Agreement (this “**Agreement**”) is made this 28 day of August, 2020 (the “**Effective Date**”) by and between Energous Corporation., a Delaware corporation (“**Energous**”) and Carl Demolder, a Research Institute (“**Company**”). Energous and Company are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

The Parties may desire to disclose to each other and discuss certain confidential information for the purpose of discussing a potential business relationship (the “**Purpose**”). This Agreement shall govern the terms and conditions of use and disclosure of Confidential Information (as hereinafter defined) by the Parties.

Accordingly, in consideration of the foregoing premises and mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

1. “**Confidential Information**” of a Party means any and all trade secrets or other confidential or proprietary information disclosed by or on behalf of a Party (“**Disclosing Party**”) to the other Party (“**Recipient**”) that is either: (i) conspicuously marked or otherwise identified as confidential or proprietary at the time of disclosure; or (ii) should reasonably be understood by Recipient to be confidential based upon the nature of the information disclosed or the circumstances of the disclosure. Confidential Information includes but is not limited to business plans, specifications, forecasts, projections, analyses, employee, client, customer and vendor information, software (including but not limited to documentation and code), product and system designs, manufacturing, logistics and sales processes, and other information relating to the business or matters of Disclosing Party or its affiliates, suppliers, customers or other business partners.
2. Exceptions. “Confidential Information” shall not include any information that: (i) is previously known to Recipient without an obligation not to disclose such information; (ii) is independently developed by or for Recipient without use of the other Party’s Confidential Information; (iii) is acquired by Recipient from a third party which was not, to Recipient’s knowledge, under an obligation not to disclose such information; or (iv) becomes publicly available through no breach of this Agreement.
3. Protection. Recipient shall maintain the confidentiality of the Confidential Information of Disclosing Party, including but not limited to exercising the same degree of care as Recipient exercises with its own confidential or proprietary information of a similar nature, but in no event less than a commercially reasonable degree of care, to prevent its unauthorized disclosure or use. Recipient shall not, without the prior written consent of Disclosing Party, disclose any portion of Disclosing Party’s Confidential Information to any person other than its officers, employees, affiliates, partners or advisors (“**Representatives**”) who are bound by obligations of confidentiality no less protective than the terms of this Agreement and who “need to know” such Confidential Information in order to accomplish the Purpose, and then only to the extent they need to know.



4. Use. Recipient may not use or make copies of Disclosing Party's Confidential Information other than to the extent necessary for the Purpose. Recipient shall be responsible and liable for any breach of this Agreement or unauthorized disclosure, use, publication or dissemination of any Confidential Information by or through any of Recipient's Representatives. Without limiting the foregoing, Recipient shall not reverse engineer or otherwise perform any analytical experiments on any Confidential Information of Disclosing Party.

5. Return or Destruction. Upon termination of this Agreement or Disclosing Party's request, Recipient shall cease all use of Disclosing Party's Confidential Information, and return or destroy (and certify the destruction thereof) all Confidential Information of Disclosing Party in Recipient's possession or reasonable control, including but not limited to all written and electronic records (and copies thereof) that contain Confidential Information of Disclosing Party and materials that are based on or use or incorporate any Confidential Information of Disclosing Party.

6. Compelled Disclosure. If Recipient receives a subpoena or other validly issued administrative or judicial process or order requesting Confidential Information of Disclosing Party, Recipient shall, to the extent legally permissible, promptly notify Disclosing Party and if requested by Disclosing Party, tender to Disclosing Party the defense of the subpoena, process or order. If requested by Disclosing Party, Recipient shall cooperate in opposing the subpoena, process or order. Unless the subpoena, process or order is timely limited, quashed or extended, Recipient will then be entitled to comply with the request to the extent permitted by law.

7. Ownership. All right, title, interest in and to any Confidential Information disclosed under this Agreement and any intellectual property rights therein are and shall remain the property of Disclosing Party. Nothing in this Agreement shall be construed as transferring or granting any express or implied right, title or interest of any kind, by license or otherwise, to either Party.

8. No Warranties. Any Confidential Information disclosed under this Agreement is provided "as is" and without any warranty, of any kind, and Recipient agrees that Disclosing Party shall not be liable for any damages whatsoever arising from or relating to Recipient's use or inability to use such Confidential Information.

9. Equitable Remedies. Recipient acknowledges that monetary remedies will not be a sufficient remedy for breach of this Agreement and that any breach or failure to perform any obligation or duty which they have agreed to perform under this Agreement may cause Disclosing Party irreparable harm. Accordingly, in addition to any other remedies that may be available at law or in equity, Disclosing Party shall be entitled to seek equitable relief.

10. Term. This Agreement shall be effective as of the Effective Date and continue in effect until discussions related to the Purpose are terminated by either or both Parties. Notwithstanding the foregoing, all obligations and rights contained in this Agreement in connection with any Confidential Information disclosed during the term of this Agreement, shall survive any termination of this Agreement.



11. No Commitments. Nothing in this Agreement requires the disclosure of any Confidential Information or requires either Party to proceed with any transaction. Each Party reserves the right, in its sole and absolute discretion, to reject any proposals and to terminate discussions with respect to a transaction or proposed relationship at any time. Any agreement which may be undertaken by the Parties shall be the subject of a separate agreement between the Parties.

12. Governing Law. This Agreement shall be subject to, and interpreted in accordance with, the laws of the State of California, without reference to any choice of law rules that would require the application of the laws of any other jurisdiction.

13. General. This Agreement is the entire agreement between the Parties relating to its subject matter and supersedes all prior agreements, written or oral, with respect thereto. Any modification of this Agreement must be in writing, explicitly referring to this Agreement and the section(s) to be modified and executed by the duly authorized representative of each Party. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then such term or provision will be modified to the minimum extent necessary to render such term or provision legal and enforceable, and notwithstanding that term or provision, all other terms and provisions of this Agreement shall remain in full force and effect. Except as expressly set forth herein, nothing in this Agreement shall confer any rights upon any person or entity other than the Parties hereto and their respective permitted successors and permitted assigns. The failure of either Party to take action as a result of a breach of this Agreement or any other failure to perform by the other Party shall constitute neither a waiver of the particular breach involved nor a waiver of either Party's right to enforce any or all provisions of this Agreement through any remedy granted by law or this Agreement.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Company**

**Energous Corporation**

Carl Demolder                      8/28/2020  
(Signature)                      Date

\_\_\_\_\_  
(Signature)                      Date

Carl Demolder  
Print Name

\_\_\_\_\_  
Printed Name

Graduate Research Engineer  
Title

\_\_\_\_\_  
Title