

**SWELL ENERGY INC.**

**MUTUAL NONDISCLOSURE AGREEMENT**

By clicking the checkbox, you confirm that you have read and agree to this Mutual Nondisclosure Agreement (this “*Agreement*”), effective as of the current date/timestamp registered with the submission of your Partnership Form (“*Effective Date*”), and this Agreement is entered into by and between Swell Energy Inc., a Delaware corporation (the “*Company*”) and you and your affiliates (each herein referred to individually as a “*Party*,” or collectively as the “*Parties*”). In consideration of the covenants and conditions contained herein, the Parties hereby agree to the following:

1. **PURPOSE**

The Parties wish to explore a business opportunity of mutual interest (the “*Opportunity*”), and for such Opportunity, each Party has disclosed, and may further disclose, certain confidential technical and business information (in such capacity, a Party disclosing the information, the “*Discloser*”) to the other Party (in such capacity, a Party receiving the information, the “*Recipient*”), that Discloser desires Recipient to treat as confidential.

2. **CONFIDENTIAL INFORMATION**

(a) *Definition.* “***Confidential Information***” means any information (including any and all combinations of individual items of information) disclosed by Discloser to Recipient, including any information disclosed before the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, discoveries, ideas, processes, designs, drawings, hardware, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment), that at the time of disclosure was either designated as “confidential” or should be understood by a reasonable person that such information is confidential due to its nature or the context of its disclosure. Confidential Information may also include information of a third party that is in Discloser’s possession and is disclosed to Recipient under this Agreement.

(b) *Exceptions.* Confidential Information shall not, however, include any information that Recipient can establish: (i) was publicly known or made generally available without a duty of confidentiality before the time of disclosure to Recipient by Discloser; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure to Recipient by Discloser through no action or inaction of Recipient; or (iii) is in the rightful possession of Recipient without confidentiality obligations at the time of disclosure by Discloser to Recipient as shown by Recipient’s then-contemporaneous written files and records kept in the ordinary course of business; provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.

(c) *Compelled Disclosure.* If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice of such disclosure and will assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient’s compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

### 3. NON-USE AND NON-DISCLOSURE

Recipient shall not use any Confidential Information for any purpose except to evaluate and engage in discussions concerning the Opportunity. Recipient shall not disclose any Confidential Information or permit any Confidential Information to be disclosed, either directly or indirectly, to any third party without Discloser's prior written consent, except as expressly permitted by this paragraph. Recipient shall not disclose Confidential Information or permit the disclosure of Confidential Information to its employees, except that Recipient may disclose Confidential Information to those employees of Recipient who are required to have the information for Recipient to evaluate or engage in discussions concerning the Opportunity; provided that such employee has signed a non-use and non-disclosure agreement in content at least as protective as the provisions hereof, before any disclosure of Confidential Information to such employee. In addition, Company as Recipient may disclose Confidential Information to those of Company's advisers, investors (both current and prospective), lenders, joint development partners, and vendors who are required to have the information for Company to evaluate or engage in discussions concerning the Opportunity, subject to a written or other legal duty not to disclose the Confidential Information. Recipient shall not reverse engineer, disassemble, or decompile any prototypes, software, samples, or other tangible objects that embody the Confidential Information. Each Party understands that the Recipient may develop information, materials or technology, or receive information, materials or technology that may be similar to the Discloser's Confidential Information. Accordingly, nothing in this Agreement represents or infers that the Recipient is prohibited from developing products, technology or other materials contemplated by the Discloser's Confidential Information, provided that Discloser's Confidential Information is not used in such development.

### 4. MAINTENANCE OF CONFIDENTIALITY

Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures it employs to protect its own most highly confidential information. Recipient shall not make any copies of the Confidential Information unless the same are previously approved in writing by Discloser. Recipient shall reproduce Discloser's proprietary rights notices on any such authorized copies. Recipient shall immediately notify Discloser of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Confidential Information.

### 5. NO OBLIGATION

Nothing in this Agreement shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Opportunity. Nothing in this Agreement shall be construed to restrict either Party's use or disclosure of its own Confidential Information.

### 6. NO WARRANTY

All Confidential Information is provided "as is." Neither party makes any warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of any Confidential Information, or regarding non-infringement or other violation of any intellectual property rights of a third party or of Recipient.

## 7. RETURN OF MATERIALS

All documents and other tangible objects containing or representing Confidential Information that have been disclosed by Discloser to Recipient, and all copies or extracts thereof or notes derived therefrom that are in the possession of Recipient, shall be and remain the property of Discloser and shall be promptly returned to Discloser or destroyed (with proof of such destruction), each upon Discloser's written request. Notwithstanding the foregoing, Recipient may retain copies of the Confidential Information as required by applicable law or regulation or document retention policies; provided, that such retained copies shall remain subject to the terms of this Agreement.

## 8. NO LICENSE

Nothing in this Agreement is intended to grant any rights to Recipient under any patent, mask work right or copyright of Discloser, nor shall this Agreement grant Recipient any rights in or to the Confidential Information of Discloser except as expressly set forth in this Agreement.

## 9. EXPORT RESTRICTIONS

Any software and other technical information disclosed under this Agreement may be subject to restrictions and controls imposed by the Export Administration Act, Export Administration Regulations and other laws and regulations of the United States and any other applicable government or jurisdiction, as enacted from time to time (the "*Acts*"). The Parties shall comply with all restrictions and controls imposed by the Acts.

## 10. TERM

The obligations of Recipient under this Agreement shall survive, regarding any particular Confidential Information of Discloser, until such Confidential Information becomes publicly known or made generally available through no action or inaction of the Recipient.

## 11. REMEDIES

Recipient agrees that any violation or threatened violation of this Agreement may cause irreparable injury to Discloser, entitling Discloser to seek injunctive relief in addition to all legal remedies.

## 12. MISCELLANEOUS

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party; except that either Party may assign this Agreement without consent in connection with a merger, reorganization, consolidation, change of control, or sale of all or substantially all of the assets to which this Agreement pertains; provided that the assigning Party provides prompt written notice to the other Party of any such permitted assignment. Any assignment or transfer of this Agreement not allowed by the foregoing shall be void. This Agreement will be interpreted and construed in accordance with the laws of California, without regard to conflict of law principles. Each Party hereby represents and warrants that the person executing this Agreement on its behalf has express authority to do so, and, in so doing, to bind such Party thereto. This Agreement contains the entire agreement between the Parties regarding the Opportunity and supersedes all prior written and oral agreements between the Parties regarding the Opportunity. If a court or other body of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. No provision of this

Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A Party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the Parties to this Agreement. The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement. This Agreement may be duly executed and delivered in counterpart by electronic, "pdf" or similar delivery.

### 13. **DISPUTES**

All disputes arising out of this Agreement will be subject to the exclusive jurisdiction and venue of the state courts located in Santa Clara County, California and the federal courts located in the Northern District of California and each Party hereby consents to the personal jurisdiction thereof.