

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-1  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**DVINEWAVE INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**335900**

(Primary Standard Industrial  
Classification Code Number)

**46-1318953**

(I.R.S. Employer  
Identification No.)

303 Ray Street  
Pleasanton, CA, 94566  
(925) 400-6583

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Chief Executive Officer  
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**As soon as practicable after the effective date of this Registration Statement.**

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

## CALCULATION OF REGISTRATION FEE

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Aggregate Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common stock (2)	4,600,000	\$ 5.00	\$ 23,000,000	\$ 2,962.40
Underwriter Warrant (3)(4)	1		\$ 100	\$ 0.01
Shares of common stock underlying Underwriter Warrant (5)	460,000	\$ 6.00	\$ 2,760,000	\$ 355.49
Total Registration Fee			\$ 25,760,100	\$ 3,317.90

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes 600,000 shares of common stock representing 15% of the shares offered to the public that the underwriter has the option to purchase to cover over-allotments, if any.

(3) No registration fee required pursuant to Rule 457(g) under the Securities Act of 1933.

(4) Represents a warrant granted to the underwriter to purchase shares of common stock in an amount up to 10% of the number of shares sold to the public in this offering. See "Underwriting" beginning on page 47 of the prospectus contained within this Registration Statement for information on underwriting arrangements relating to this offering.

(5) Pursuant to Rule 416 under the Securities Act of 1933, as amended, there is also being registered hereby such indeterminate number of additional shares of common stock of the registrant as may be issued or issuable because of stock splits, stock dividends, stock distributions, and similar transactions.

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment, which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THESE SECURITIES MAY NOT BE SOLD UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND WE ARE NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.**

SUBJECT TO COMPLETION, DATED DECEMBER \_\_, 2013

**PRELIMINARY PROSPECTUS**

**4,000,000 Shares of Common Stock**

**DVINEWAVE INC.**

We are offering 4,000,000 shares of our common stock, \$0.00001 par value, in a firm commitment underwritten offering, which share number reflects our proposed one for 3.99 reverse stock split (the "reverse stock split") described in this prospectus. After the effectiveness of the registration statement, of which this prospectus is a part, and concurrently with the pricing of the offering, we will effect the reverse stock split.

This is an initial public offering of our common stock. We expect the public offering price to be \$5.00 per share (assuming the reverse stock split). There is presently no public market for our common stock. We will apply for listing of our common stock on the Nasdaq Capital Market under the symbol "[●]," which listing we expect to occur upon consummation of this offering. No assurance can be given that our application will be approved. If our application to the Nasdaq Capital Market is not approved, we will not complete the offering or effect the reverse stock split.

**We are an "emerging growth company" under the federal securities laws and will have the option to use reduced public company reporting requirements. Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 8 for a discussion of information that should be considered in connection with an investment in our securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

MDB Capital Group, LLC is the underwriter for our initial public offering. MDB Capital Group, LLC has rendered advisory services to us in the past and has acted as our placement agent in connection with the placement of our senior secured convertible promissory notes completed in May 2013.

If we sell all of the common stock we are offering, we will pay to MDB Capital Group, LLC \$2.0 million, or, 10% of the gross proceeds of this offering and non-accountable expenses equal to \$175,000. For a more complete discussion of the compensation we will pay to the underwriter, please see the section of this prospectus titled "Underwriting." In connection with this offering, we have also agreed to issue to MDB Capital Group, LLC a warrant to purchase shares of our common stock in an amount up to 10% of the shares of common stock sold in the public offering, with an exercise price equal to 120% of the per-share public offering price.

	<b>Per Share</b>	<b>Total</b>
Public offering price	\$ 5.00	\$ 20,000,000
Underwriting discount	\$ 0.50	\$ 2,000,000
Proceeds, before expenses, to us	\$ 4.50	\$ 18,000,000

(1) Does not include a non-accountable expense allowance equal to \$175,000 payable to MDB Capital Group, LLC, the underwriter. See "Underwriting" for a description of compensation payable to the underwriter.

The underwriter may also purchase an additional 600,000 shares of our common stock (assuming the reverse stock split) amounting to 15% of the number of shares offered to the public, within 45 days of the date of this prospectus, to cover over-allotments, if any, on the same terms set forth above.

The underwriter expects to deliver the shares on or about \_\_\_\_\_, 2013.

**MDB Capital Group, LLC**

The date of this prospectus is \_\_\_\_\_, 2013.

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Unless otherwise stated or the context otherwise requires, the terms “DvineWave,” “we,” “us,” “our” and the “Company” refer to DvineWave Inc.

**You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with additional or different information. The information contained in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.**

**No dealer, salesperson or any other person is authorized in connection with this offering to give any information or make any representations about us, the securities offered hereby or any matter discussed in this prospectus, other than those contained in this prospectus and, if given or made, the information or representations must not be relied upon as having been authorized by us. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any security other than the securities offered by this prospectus, or an offer to sell or a solicitation of an offer to buy any securities by anyone in any circumstance in which the offer or solicitation is not authorized or is unlawful.**

## Prospectus Summary

This summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you need to consider in making your investment decision. You should carefully read this entire prospectus, as well as the information to which we refer you, before deciding whether to invest in our common stock. You should pay special attention to the “Risk Factors” section of this prospectus to determine whether an investment in our common stock is appropriate for you.

This registration statement, including the exhibits and schedules thereto, contains additional relevant information about us and our securities. With respect to the statements contained in this prospectus regarding the contents of any agreement or any other document, in each instance, the statement is qualified in all respects by the complete text of the agreement or document, a copy of which has been filed or incorporated by reference as an exhibit to the registration statement.

### About DvineWave Inc.

We are a development stage technology company. We are developing technology that can enable wireless charging or powering of electronic devices at distance. We believe our technology is a novel approach, in that it charges or powers devices by surrounding them with a three dimensional (“3D”) pocket of energy formed by radio frequencies (“RF pocket”). In our laboratory, our prototype devices have enabled wireless transmission of energy from a transmitter (similar in size and shape to a Wi-Fi router) to multiple receiver circuits at a distance of up to 15 feet. If the receiver chip we expect to develop is integrated into a low-power (under 10 watts) electronic device, the chip should be able to utilize the received energy to either power the device directly or charge the battery that powers the device. We are also developing management and control of our solution through a software application that will ultimately reside on the device being charged. We believe that if our development efforts are successful, our transmitter/receiver solution will initially be able to power or charge multiple electronic devices at up to 1.5 watts at distances of up to 30 feet. Subsequent development efforts will focus on increasing the charging wattage, increasing the distance of charging, enhancing reliability, enhancing management and control of the solution and reducing design cost.

We were incorporated in Delaware on October 30, 2012. The address of our corporate headquarters is 303 Ray Street, Pleasanton, CA, 94566 and our telephone number is (925) 400-6583. Our website can be accessed at [www.dvinewave.com](http://www.dvinewave.com). The information contained on, or that may be obtained from, our website is not, and shall not be deemed to be, a part of this prospectus.

### Our Technology

The wireless charging solution we are developing employs 3D “pocketforming.” The solution has two main hardware components: a transmitter, which creates the RF pocket; and one or many receivers connected to electronic devices, which receive the power from the RF pocket. Today this solution is able to send wattage from the transmitter to individual receiver circuit boards.

Our transmitter locates the receiver(s) in a 3-dimensional space. Next, the transmitter generates a proprietary waveform to create an RF pocket around the receiver(s). We expect that the receiver chips we intend to develop will gather power from this RF pocket. We believe that these proposed receiver chips would then be able to either charge rechargeable-battery devices, or power low-power (under 10 watts) devices that would otherwise need a battery or a connection to a power outlet. Our transmitter uses proprietary software algorithms to dynamically direct, focus and control our proprietary waveform in three dimensions. We believe this control will allow for transmission of energy to a moving object (such as a mobile phone in a user’s pocket).

## Our Business Strategy

We intend to license our technology to various consumer electronics companies. We intend to pursue this path because we believe there are several market verticals to which our technology can apply, and we believe that this is the most capital-efficient manner in which we can address many of them at once. We intend to target all aspects of the consumer electronics supply chain. This includes:

- Manufacturers of individual electronic components, such as antennae and integrated batteries.
- Original equipment manufacturers (“OEMs”), which manufacture products for sale under another firm’s brand.
- Original design manufacturers (“ODMs”), which also manufacture products for sale under another firm’s brand, but differ from OEMs in that they also design these products (either collaboratively with their customers or on their own). An ODM may engage multiple companies with similar designs that are then marketed under several different end customers’ brands.
- Branded consumer electronics firms, some of which design their own products and manufacture them through OEMs, and some of which are value-added resellers that rely on an ODM to design and manufacture their products.

Collectively, we refer to these firms as the “consumer electronics supply chain”. We believe strategic relationships with key consumer electronics supply chain licensees will enable our technology to penetrate the marketplace much faster than it would if we manufactured, marketed and distributed products ourselves. We believe this business model will allow us to concentrate our resources on projects more aligned to our core competency in generating licensable intellectual property through research-and-development. As we develop new applications for our technology, we expect to target new strategic relationships in different market sectors.

## Reverse Stock Split and Offering Requirements

We will close this offering only if our listing application is approved by the Nasdaq Capital Market. If we are unable to meet this requirement, we will terminate the offering.

On December 12, 2013 our board of directors and stockholders holding a majority of our outstanding voting power, approved resolutions authorizing our board of directors to effect a reverse split of our common stock at an exchange ratio of between one-for-two and one-for-ten, with our board of directors retaining the discretion as to whether to implement the reverse split and which exchange ratio to implement. The reverse stock split is intended to allow us to meet the minimum share price requirement of The Nasdaq Capital Market. In [●], our board of directors determined that following the effectiveness of the registration statement, of which this prospectus is a part, and prior to the closing of this offering, the board of directors will effect the reverse stock split at a ratio of 1 share for each 3.99 shares.

**Except as otherwise indicated and except in our financial statements, all information regarding share amounts of common stock and prices per share of common stock contained in this prospectus assume the consummation of the reverse stock split to be effected following effectiveness of the registration statement, of which this prospectus is a part, and prior to the closing of this offering.**

## Status as an Emerging Growth Company

We are an “emerging growth company” as that term is defined in the Jumpstart Our Business Startups Act (the “JOBS Act”). Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act) are required to comply with the new or revised financial accounting standard. The JOBS Act also provides that a company can elect to opt out of the extended transition period provided by Section 102(b)(1) of the JOBS Act and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have irrevocably elected to opt out of this extended transition period provided by Section 102(b)(1) of the JOBS Act. Even though we have elected to opt out of the extended transition period, we may still take advantage of all of the other provisions of the JOBS Act, which include, but are not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, the reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and the exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

### **Ability to Continue our Operations**

For the period October 30, 2012 (inception) through December 31, 2012 our net loss was \$21,287. Net loss for the nine month period ended September 30, 2013 was \$3,242,809, which increased our accumulated net loss for the period October 30, 2012 (inception) through September 30, 2013 to \$3,264,096.

We will need financing to continue our operations, particularly for the support of our research and development efforts. Beyond this offering, we have no committed sources of capital and do not know whether additional financing will be available when needed on terms that are acceptable, if at all. The failure to satisfy our capital requirements will adversely affect our business, financial condition, results of operations and prospects.

Unless we raise funds in this offering, we will not have sufficient capital to continue our operations for the next 12 months. Even if we raise funds in this offering, they may be insufficient to sustain our operations for the next 12 months if our costs are higher than projected or unforeseen expenses arise.

### **Convertible Promissory Notes**

We issued \$5.5 million in senior secured convertible promissory notes that bear simple interest at 6% and must be paid or converted into shares of our common stock on or before August 16, 2014. We refer to these promissory notes as the "Convertible Notes" in this prospectus. Upon consummation of a public offering of our common stock yielding gross proceeds of at least \$10 million, all of the outstanding principal and interest accrued on the Convertible Notes will be converted in full into shares of our common stock. Assuming that this offering was completed on September 30, 2013, based on interest accrued through such date the Convertible Notes would have been converted into 2,249,910 shares of our common stock.

### **Risks Related to Our Business**

Our business is subject to a number of risks. You should understand these risks before making an investment decision. If any of these risks actually occurs, our business, financial condition or results of operations would likely be materially adversely affected. In such case, the trading price of our common stock would likely decline, and you may lose all or part of your investment. Below is a summary of some of the principal risks we face. The risks are discussed more fully in the section of this prospectus below titled "Risk Factors."

- We are a development-stage technology company, have no history of generating revenue, have a history of operating losses, and we may never achieve or maintain profitability.
- We will need additional financing and if we are unable to raise additional capital when and as needed in the future, we will not have sufficient funds to continue operations.

- We may raise additional financing by issuing new securities that may have terms or rights superior to those of our shares of common stock, which could adversely affect the market price of our shares of common stock and our business.
- Our technology under development is subject to regulation by the Federal Communications Commission and by other governmental agencies and we may have difficulty complying with applicable regulations.
- Even if we do successfully commercialize our technology, it may never achieve widespread market acceptance.
- Our industry is subject to intense competition and rapid technological change, which may result in products or new solutions that are superior to our technology under development or other future products we may bring to market from time to time. If we are unable to anticipate or keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our technology may become less useful or obsolete and our operating results will suffer.
- We may be unable to protect our intellectual property.
- We expect to depend on third-party licensors to manufacture, market and distribute our technology under development or other future products. If these strategic partners and distributors fail to successfully manufacture, market and distribute our technology under development or other future products, our business will be materially harmed.
- We could become subject to product liability claims, product recalls, and warranty claims that could be expensive, divert management's attention and harm our business.

## THE OFFERING

*The following summary contains basic information about our initial public offering and our common stock and is not intended to be complete. It does not contain all of the information that may be important to you. For a more complete understanding of our common stock, please refer to the section of this prospectus titled "Description of Capital Stock."*

<b>Issuer</b>	DvineWave Inc., a Delaware corporation.
<b>Common Stock Offered By Us</b>	4,000,000 shares of common stock, par value \$0.00001 per share.
<b>Over-allotment Option</b>	We have granted an option to our underwriter to purchase up to an additional 600,000 shares of common stock within 45 days of the date of this prospectus in order to cover over-allotments, if any.
<b>Common Stock Outstanding Prior To This Offering</b>	2,708,214 shares of common stock (1).
<b>Public Offering Price</b>	\$5.00 per share
<b>Common Stock Outstanding After This Offering</b>	8,958,124 shares of common stock (1)(2)(3)
<b>Use of Proceeds</b>	We intend to use the net proceeds from our sale of common stock in this offering as follows: approximately \$10.3 million will be used for product research, development, reference design development and product certifications, approximately \$0.7 million will be used for the protection of our intellectual property, approximately \$2.8 million will be used for sales and marketing activities, approximately \$0.8 million will be used for the purchase of fixed assets which consists primarily of computer equipment and software, and the balance of the funds will be used for general and administrative expenses and other general corporate purposes. See "Use of Proceeds" and "Plan of Operation" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional information.



**Market And Trading Symbol For The Common Stock**

There is currently no market for our common stock. We will apply for listing of our common stock on the Nasdaq Capital Market under the symbol “[●]”.

**Underwriter Common Stock Purchase Warrant**

In connection with this offering, we have also agreed to sell to MDB Capital Group, LLC and its designees a warrant to purchase up to 10% of the shares of common stock sold in this offering. If this warrant is exercised, each share may be purchased by MDB Capital Group, LLC at \$6.00 per share (120% of the price of the shares sold in this offering.) This warrant will have a five-year term and be subject to a six month lock-up. See “Underwriting” for additional information.

**Lock-Up Agreements**

Our officers, directors and employees, and 5% or greater holders of our equity securities as determined pursuant to Rule 13d-3 of the Securities Exchange Act of 1934, as amended, and MDB Capital, LLC (with respect to its currently held warrants originally issued on May 16, 2013) will have the securities they own locked up until the first anniversary of the Underwriting Agreement we will enter into in conjunction with this offering (the “One Year Lock-Up”). The purchasers of our senior secured convertible promissory notes are subject to lock-up requirements for periods that may last no more than 180 days following the date of this prospectus (the “180 Days Lock-Up”). The number of currently outstanding shares of common stock subject to the One Year Lock-Up totals 2,708,214 shares, the number of shares underlying options subject to the One Year Lock-Up totals 275,689 shares and the number of shares underlying warrants subject to the One Year Lock-Up totals 461,561 shares. The number of shares of common stock to be issued to the holders of our senior secured convertible promissory notes that will be subject to the 180 Days Lock-Up as of September 30, 2013 totals 2,249,910 shares. The warrant to purchase up to 10% of the shares of common stock sold in this offering we have agreed to issue MDB Capital Group, LLC in connection with this offering will also be subject to the 180 Days Lock-up. For more information about the lock-up agreements and requirements, see the section titled “Underwriting - Lock-Up Agreements” in this prospectus.

**Offering Termination**

If we fail to obtain approval from The Nasdaq Stock Market to list our common stock on the Nasdaq Capital Market, we will not complete the offering.

(1) The number of shares of our common stock to be outstanding both before and after this offering is based on the number of shares outstanding as of September 30, 2013 and excludes:

- 275,689 shares of our common stock reserved for issuance under stock option agreements at a weighted average exercise price of \$1.68 per share;
- 461,561 shares of common stock reserved for issuance under outstanding warrants at a weighted average exercise price of \$1.22 per share;
- 766,478 shares of our common stock reserved for future issuance under our 2013 Equity Incentive Plan (including 122,806 shares reserved for issuance pursuant to offer letters and employment agreements);
- shares to be issued upon conversion of interest accrued on our senior secured convertible promissory notes after September 30, 2013; and
- shares of our common stock issuable upon exercise of the warrant to be issued to the underwriter representing ten percent of the number of shares offered by this prospectus.

Unless otherwise specifically stated, information throughout this prospectus assumes that none of the outstanding options or warrants to purchase shares of our common stock are exercised.

(2) Unless otherwise indicated, the number of shares of common stock presented in this prospectus excludes shares issuable pursuant to the exercise of the underwriter's over-allotment option.

(3) This number includes 4,000,000 shares of common stock that will be issued in this offering and 2,249,910 shares of common stock that will be issued to the holders of our senior secured convertible promissory notes upon the completion of this offering.

**SUMMARY SELECTED FINANCIAL INFORMATION**

The table below includes historical selected financial data for the period October 30, 2012 (inception) through December 31, 2012 and for the nine months ended September 30, 2013, derived from our audited and unaudited financial statements included elsewhere in this prospectus.

You should read the historical selected financial information presented below in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and our financial statements and the notes to those financial statements included elsewhere in this prospectus. Historical results are not necessarily indicative of the results that may be expected for any future period.

	For the Period October 30, 2012 (Inception) through December 31, 2012	For the Nine Months ended September 30, 2013 <i>(Unaudited)</i>	For the Period October 30, 2012 (Inception) through September 30, 2013 <i>(Unaudited)</i>
<b>STATEMENTS OF OPERATIONS:</b>			
<b>Operating expenses:</b>			
Derivative instrument issuance expenses	\$ -	\$ 887,062	\$ 887,062
Research and development expenses	17,103	1,019,950	1,037,053
General and administrative expenses	4,184	808,903	813,087
Marketing expenses	-	32,014	32,014
Loss from operations	(21,287)	(2,747,929)	(2,769,216)
<b>Other (expense) income:</b>			
Change in fair value of derivative liabilities	-	(111,500)	(111,500)
Interest expense	-	(383,380)	(383,380)
Other (expense) income, net	-	(494,880)	(494,880)
Net loss	<u>\$ (21,287)</u>	<u>\$ (3,242,809)</u>	<u>\$ (3,264,096)</u>
Basic and diluted net loss per common share	<u>\$ -</u>	<u>\$ (0.32)</u>	
Weighted average shares outstanding, basic and diluted	<u>7,680,000</u>	<u>10,254,345</u>	

	As of December 31, 2012	As of September 30, 2013 (Unaudited)
<b>BALANCE SHEET DATA:</b>		
Cash and cash equivalents	\$ 994	\$ 3,854,489
Working capital (deficit)	(11,287)	(3,073,761)
Total assets	994	3,903,193
Total liabilities	12,281	6,956,608
Total stockholders' deficit	(11,287)	(3,053,415)

## RISK FACTORS

*We are subject to various risks that may materially harm our business, prospects, financial condition and results of operations. An investment in our common stock is speculative and involves a high degree of risk. In evaluating an investment in shares of our common stock, you should carefully consider the risks described below, together with the other information included in this prospectus.*

*If any of the events described in the following risk factors actually occurs, or if additional risks and uncertainties that are not presently known to us or that we currently deem immaterial later materialize, then our business, prospects, results of operations and financial condition could be materially adversely affected. In that event, the trading price of our common stock could decline, and you may lose all or part of your investment in our shares. The risks discussed below include forward-looking statements, and our actual results may differ substantially from those discussed in these forward-looking statements.*

### **Risks Related to Our Business**

***We are a development-stage technology company, have no history of generating revenue, have a history of operating losses, and we may never achieve or maintain profitability.***

We are a development-stage technology company. We have a limited operating history and only a preliminary business plan upon which investors may evaluate our prospects. We have never generated revenues and we have a history of losses from operations. As of September 30, 2013, we had an accumulated deficit of approximately \$3,264,096. Our ability to achieve revenue-generating operations and, ultimately, achieve profitability will depend on whether we can obtain additional capital when we need it, complete the development of our technology and find customers who will purchase our future products and services. There can be no assurance that we will ever generate revenues or achieve profitability.

***Our efforts may never demonstrate the feasibility of our technology.***

We have developed a working prototype of our technology but significant additional research and development activity will be required before we achieve a commercial product. Our research and development efforts remain subject to all of the risks associated with the development of new products based on emerging technologies, including without limitation unanticipated technical or other problems and the possible insufficiency of funds needed in order to complete development of these products and enable us to render services. Technical problems may result in delays and cause us to incur additional expenses that would increase our losses. If we cannot complete, or if we experience significant delays in developing our technology, and products and services based on such technology, for use in potential commercial applications, particularly after incurring significant expenditures, our business may fail. In particular, to our knowledge, the technological concepts we are applying to develop commercial applications of wireless power for fixed and mobile low-power rechargeable devices have not been previously successfully applied by anyone else, if we fail to develop a practical, efficient or economical commercial product based on those technological concepts, our business may fail.

***We expect to need FCC approval for our technology, which may be difficult to achieve, and existing laws or regulations or future legislative or regulatory changes may affect our business.***

Our remote charging technology involves the transmission of power using RF energy waves, which are subject to regulation by the Federal Communications Commission ("FCC"), and may be subject to regulation by other federal, state and local agencies. We intend to design our technology so that it will operate in the 2.4/5.8 GHz radio frequency range, which is the same range as Wi-Fi routers and several other wireless consumer electronics. For those types of products, the FCC grants what is known as Part 15 approval if, among other things, the specific absorption rate ("SAR") is below certain thresholds. In addition, because our technology involves the transmission of power greater than the power threshold limits of Part 15, we also expect to need to obtain FCC Part 18 approval. To our knowledge, the transmission of power using RF energy waves by a consumer product at the ranges we are proposing is novel and there can be no assurance that we will be able to obtain this FCC approval or that other governmental approvals will not be required. Our efforts to achieve required governmental approvals could be costly and time consuming and if we are unable to receive any such required approvals in a timely a cost-efficient manner our business and operating results may be materially adversely effected.

The cost of compliance with new laws or regulations governing our technology or future products could adversely affect our financial results. New laws or regulations may impose restrictions or obligations on us that could force us to redesign our technology under development or other future products, and may impose restrictions that are not possible or practicable to comply with, which could cause our business to fail. We cannot predict the impact on our business of any legislation or regulations related to our technology or future products that may be enacted or adopted in the future.

***We anticipate future losses and negative cash flow, and it is uncertain if or when we will become profitable.***

We have not yet demonstrated our ability to generate revenue, and we may never be able to produce material revenues or operate on a profitable basis. As a result, we have incurred losses since our inception and expect to experience operating losses and negative cash flow for the foreseeable future.

We expect to expend significant resources on hiring of personnel and startup costs, including payroll and benefits, product testing and development, intellectual property development and prosecution, marketing and promotion, capital expenditures, working capital, general and administrative expenses, and fees and expenses associated with this offering. We expect to incur costs and expenses related to prototype development, consulting costs, laboratory development costs, obtaining regulatory approvals required for our technology and reference product designs, marketing and other promotional activities, hiring of personnel, and the continued development of relationships with strategic business partners. We are attempting to obtain the necessary working capital for operations, of which this offering is a part, but we may not be able to obtain financing in a sufficient amount or at all. We anticipate our losses will continue to increase from current levels during our development stage.

***We will need additional financing.***

We anticipate that our future cash requirements may be significant. Even following completion of this offering we do not expect to have sufficient funds to implement our business plan, which includes completing the development of our technology and the license of our technology to consumer electronics supply chain firms. We expect that, in the future, we will need to raise capital through new financings. Such financings could include equity financing, which may be dilutive to stockholders, or debt financing, which would likely restrict our ability to borrow from other sources. In addition, such securities may contain rights, preferences or privileges senior to those of the rights of our current stockholders. There can be no assurance that additional funds will be available on terms attractive to us, or at all. If adequate funds are not available, we may be required to curtail the development of our technology or materially curtail or reduce our operations. We could be forced to sell or dispose of our rights or assets. Any inability to raise adequate funds on commercially reasonable terms could have a material adverse effect on our business, results of operation and financial condition, including the possibility that a lack of funds could cause our business to fail and liquidate with little or no return to investors.

***We may be unable to continue as a going concern if we do not successfully raise additional capital or if we fail to generate sufficient revenue from operations.***

Our independent registered public accounting firm has issued an unqualified opinion with an explanatory paragraph to the effect that there is substantial doubt about our ability to continue as a going concern. The factors giving rise to this unqualified opinion with an explanatory paragraph could have a material adverse effect on our business, financial condition, results of operations and cash flows. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources” and Note 2 to our financial statements included elsewhere in this prospectus.

Primarily as a result of our lack of revenue, history of losses to date and our lack of liquidity, there is substantial uncertainty as to our ability to continue as a going concern. If we are unable to raise additional capital or if we are unable to generate sufficient revenue from our operations, we may not stay in business. We have no committed sources of capital and there is no assurance whether additional financing will be available when needed on terms that are acceptable, if at all. We do not own any significant assets that we expect could serve as acceptable collateral for a bank or other commercial lender. The above circumstances may discourage some investors from purchasing our stock, lending us money, or from providing alternative forms of financing. The failure to satisfy our capital requirements would adversely affect our business, financial condition, results of operations and prospects. Unless we raise additional funds, either through the sale of equity securities or one or more collaborative arrangements, we will not have sufficient funds to continue operations. Even if we take these actions, they may be insufficient, particularly if our costs are higher than projected or unforeseen expenses arise.

***We may have difficulty managing growth in our business.***

As we expand our activities, there will be additional demands on our financial, technical, operational and management resources. The failure to continue to upgrade our technical, administrative, operating and financial control systems or the occurrence of unexpected expansion difficulties, including issues relating to our research and development activities and retention of experienced scientists, managers and engineers, could have a material adverse effect on our business, financial condition and results of operations and our ability to timely execute our business plan. If we are unable to implement these actions in a timely manner, our results may be adversely affected.

***If we successfully commercially launch a product, and our product does not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.***

Achieving acceptance of a wireless recharging system as a preferred method to recharge low-power fixed and mobile electronic devices will be crucial to our continued success. Consumers and commercial customers will not begin to use or increase the use of our product unless they agree that the convenience of our solution would be worth the additional expense of purchasing our system. We have no history of marketing any product and we may fail to generate significant interest in our initial commercial product or any other product we may develop. These and other factors, including the following factors, may affect the rate and level of the market acceptance:

- our system's price relative to other products or competing methods of recharging;
- the effectiveness of our sales and marketing efforts;
- perception by users, both individual and enterprise users, of our system's convenience, safety, efficiency, and benefits compared to competing methods of recharging;
- press and blog coverage, social media coverage, and other publicity and public relations factors which are not within our control; and
- regulatory developments related to marketing our products or their inclusion in others' products.

If we are unable to achieve or maintain market acceptance, our business would be significantly harmed.

***If we successfully commercially launch a product, we may experience seasonality or other unevenness in our financial results in consumer markets or a long and variable sales cycle in enterprise markets.***

While we do not now have revenue or a commercial product, our strategy depends on developing a successful commercial product and effectively licensing our technology into the consumer and enterprise markets. We will need to understand enterprise procurement and consumer buying cycles to be successful in licensing our technology into those markets. If we eventually generate a substantial portion of our revenues from licensing arrangements, we anticipate it is possible that demand for our technology could vary similarly with the market for products with which our technology may be used, for example, the market for new purchases of laptops, tablet, mobile phones, gaming systems, toys and the like. Such consumer markets are often seasonal, with peaks in and around the December holiday season and the August - September back-to-school season. Enterprises may have annual or other budgeting and buying cycles that could affect us, and, particularly if we are designated as a capital improvement project, we may have a long or unpredictable sales cycle.

***We may not be able to achieve all the product features we seek to include in our product.***

We have developed a prototype of our product concept that displays limited functionality in a laboratory setting. There are a variety of features we seek to include in our product that we have not yet achieved. For example, our prototype transmitter is capable of sending some wattage to three devices. While recharging on a commercially acceptable level multiple devices from one transmitter may be possible theoretically by sharing the capabilities of the transmitter, we have not achieved these results, even in the laboratory. We believe our research and development efforts will yield additional functionality over time. However, there can be no assurance that we will be successful in achieving all the features we are targeting and our inability to do so may limit the appeal of our product to consumers.

***Use of our technology under development or other future products may require the user to purchase additional products to use with existing devices. To the extent these additional purchases are inconvenient, the adoption of our technology under development or other future products could be slowed, which would harm our business.***

All rechargeable devices will require our receiver technology, which may be embedded in a sleeve, case or other enclosure. Certain products, for example smoke detectors or toys equipped with replaceable AA size or other sized batteries, would need to be outfitted with enhanced batteries and other hardware that would enable the devices to be rechargeable by our system. In each case to use a device with our system, unless, for example, a consumer electronics supply chain firm has built compatible battery technology and a receiver into the device, an end user or enterprise customer will be required to retrofit the device with a receiver and may be required to upgrade the battery technology used with the device. These additional steps and expenses may offset the convenience for some users and discourage some users from purchasing our technology under development or other future products. Such factors may inhibit adoption of our technology, which would harm our business. We have not developed the enhanced battery to be used in devices, and our ability to enable use of our technology with devices that will require an enhanced battery will depend on our ability to develop a commercial version of such an enhanced battery that could be manufactured at a reasonable cost. If we fail to develop or enable a commercially practicable enhanced battery, we expect our business would be harmed, and we may need to change our strategy and target markets.

***Laboratory conditions differ from commercial manufacturing conditions and field conditions, which could affect the effectiveness of our technology under development or other future products. Failures to effectively move from laboratory to the field would harm our business.***

Observations and developments that may be achievable under laboratory circumstances may not be able to be replicated in commercial manufacturing facilities or in the use of products in the field. As one example of the difference between ideal laboratory conditions and field use, consider that in the laboratory, we can arrange for the transmitter to have line-of-sight transmission to a receiver. In the field the receiver may be obscured or obstructed, or placed around a corner. These conditions may significantly decrease or eliminate the power received at the receiver or the effective range, because the RF energy from the transmitter may be absorbed by obscuring or blocking material or may need to be reflected off of a surface to reach the receiver, making the transmission distance longer than straight-line distances. The failure of our technology under development or other future products to be able to be manufactured in available commercial manufacturing facilities or to meet the demands of users in the field would harm our business.

***Safety concerns and legal action by private parties may affect our business.***

While we believe our technology is safe, it is possible that some people may be concerned with wireless transmission of power in a manner that has occurred with some other wireless technologies as they were put into residential and commercial use, such as the safety concerns that were raised by some regarding the use of cellular telephones and other devices to transmit data wirelessly in close proximity to the human body. While we plan to at least partially address this potential concern by developing our management software to be configurable by users to selectively recharge devices in ways that would be intended to avoid recharging in close proximity to a human body, such as recharging only during predetermined time periods or recharging only when the device is not moving, we do not plan to conduct any tests to determine whether RF waves produce harmful effects on humans or other animals. We may be unable to effectively prevent recharging in close proximity to a user's body, which could affect the marketability of our product or could result in requests for law or regulation governing our technology under development or a class of products in which our technology under development would be included. In addition, while we believe our technology is safe, users of our technology under development or other future products who suffer medical ailments may blame the use of our products, as occurred with a small number of users of cellular telephones. Any resulting legal action against us claiming our products caused harm could be expensive, divert management and adversely affect us or cause our business to fail, whether or not such legal actions were ultimately successful.

***Our industry is subject to intense competition and rapid technological change, which may result in products or new solutions that are superior to our technology under development or other future products we may bring to market from time to time. If we are unable to anticipate or keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our products may become less useful or obsolete and our operating results will suffer.***

The consumer and commercial electronics industry in general and power, recharging and alternative recharging method segment of that industry in particular are subject to intense and increasing competition and rapidly evolving technologies. Because our products are expected to have long development cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to demonstrate the advantages of our products and technologies over well-established alternative solutions, products and technologies, as well as newer methods of power delivery and convince consumers and enterprises of the advantages of our products and technologies. Traditional wall plug-in recharging remains an inexpensive alternative to our technology under development. Also, directly competing products are offered by Powermat Technologies, Duracell's wireless charging business, Energizer's inductive charging business, PureEnergy Solutions, Inc., eCoupled and PowerCast Corporation, which have greater resources than us and are better established in the market than we are. We cannot be certain which other companies may have already decided to or may in the future choose to enter our markets. For example, consumer electronics products companies may invest substantial resources in wireless power or other recharging technologies and may decide to enter our target markets. Successful developments of competitors that result in new approaches for recharging could reduce the attractiveness of our products or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render our technology under development or future products based on our technology obsolete. Many of our competitors have or may have greater corporate, financial, operational, sales and marketing resources, and more experience in research and development than we have. We cannot assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have or be able to raise or develop the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.



Our competitive position also depends on:

- widespread awareness, acceptance and adoption by the consumer and enterprise markets of our technology under development and future products;
- our ability to design a product that may be sold at an acceptable price point;
- the development by us of new or enhanced technologies or features that improve the convenience, efficiency, safety or perceived safety, and productivity of our technology under development and future products;
- properly identifying customer needs and delivering new products or product enhancements to address those needs;
- limiting the time required from proof of feasibility to routine production;
- limiting the timing and cost of regulatory approvals;
- our ability to attract and retain qualified personnel;
- the extent of our patent protection or our ability to otherwise develop proprietary products and processes; and
- securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts.

If our technology under development is not or our future products are not competitive based on these or other factors, our business would be harmed.

***It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.***

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in our products. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges.

As of December 9, 2013, we have 38 pending U.S. patents and provisional patent applications on file, but do not have any issued patents to protect our technology.

In addition to patents, we expect to rely on a combination of trade secrets, copyright and trademark laws, nondisclosure agreements and other contractual provisions and technical security measures to protect our intellectual property rights. These measures may not be adequate to safeguard the technology underlying our products. If they do not protect our rights adequately, third parties could use our technology, and our ability to compete in the market would be reduced. Although we are attempting to obtain patent coverage for our technology where available and where we believe appropriate, there are aspects of the technology for which patent coverage may never be sought or received. We may not possess the resources to or may not choose to pursue patent protection outside the United States or any or every country other than the United States where we may eventually decide to sell our future products. Our ability to prevent others from making or selling duplicate or similar technologies will be impaired in those countries in which we have no patent protection. Although we have 38 pending U.S. patents and provisional patent applications on file in the United States protecting aspects of our technology under development, our patents may not issue as a result of those applications drawing priority or otherwise based on those patent applications, may issue only with limited coverage or may issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, even if patents do issue based on our applications or future applications, any issued patents may not provide us with any competitive advantages. Competitors may be able to design around our patents or develop products that provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges by third parties, and others may challenge the inventorship or ownership of our patents and pending patent applications. In addition, if we choose to and are able to secure protection in countries outside the United States, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property rights or to defend our patents against challenge could be expensive and time consuming and could divert our management's attention. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge.

We may also in the future as one of our strategies to deploy our technology into the market, license patent and other proprietary rights to aspects of our technology to third parties. Disputes with our licensors may arise regarding the scope and content of these licenses. Further, our ability to expand into additional fields with our technologies may be restricted by our existing licenses or licenses we may grant to third parties in the future.

The policies we use to protect our trade secrets may not be effective in preventing misappropriation of our trade secrets by others. In addition, confidentiality agreements executed by our employees, consultants and advisors may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. Litigating a trade secret claim is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge methods and know-how. If we are unable to protect our intellectual property rights, we may be unable to prevent competitors from using our own inventions and intellectual property to compete against us, and our business may be harmed.

Because our industry is characterized by competing intellectual property, we may be sued for violating the intellectual property rights of others. Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. We have not conducted any significant search of patents issued to third parties, and no assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields, our competitors or other third parties may assert that our products and the methods we employ in the use of our products are covered by United States or foreign patents held by them. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware, and which may result in issued patents that our technology under development or other future products would infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our products or parts may infringe and of which we are unaware. As the number of competitors in the market for wireless power and alternative recharging solutions increases, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

In the event that we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property were upheld as valid and enforceable and we were found to infringe or violate the terms of a license to which we are a party, we could be prevented from selling any infringing products of ours unless we could obtain a license or were able to redesign the product to avoid infringement. If we were unable to obtain a license or successfully redesign, we might be prevented from selling our technology under development or other future products. If there is an allegation or determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, or a settlement or ongoing royalties. In these circumstances, we may be unable to sell our products at competitive prices or at all, our business and operating results could be harmed.

***We could become subject to product liability claims, product recalls, and warranty claims that could be expensive, divert management's attention and harm our business.***

Our business exposes us to potential liability risks that are inherent in the marketing and sale of products used by consumers. We may be held liable if our technology under development or other future products cause injury or death or are found otherwise unsuitable during usage. Our technology under development incorporates sophisticated components and computer software. Complex software can contain errors, particularly when first introduced. In addition, new products or enhancements may contain undetected errors or performance problems that, despite testing, are discovered only after installation. While we believe our technology is safe, because our products are designed to be used to perform complex functions involving RF energy, possibly in close proximity to users, users could allege or possibly prove defects, some of which could be alleged or proved to cause harm to users or others. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. The coverage limits of our insurance policies we may choose to purchase to cover related risks may not be adequate to cover future claims. If sales of our products increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or excessive warranty claims, whether arising from defects in design or manufacture or otherwise, could negatively affect our sales or require a change in the design or manufacturing process, any of which could harm our reputation and business, harm our relationship with licensors of our products, result in a decline in revenue and harm our business.

In addition, if a product we designed is defective, whether due to design or manufacturing defects, improper use of the product or other reasons, we or our strategic partners may be required to notify regulatory authorities and/or to recall the product. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities of our products, which could in turn result in required recalls, restrictions on the sale of the products or other penalties. The adverse publicity resulting from any of these actions could adversely affect the perception of our customers and potential customers. These investigations or recalls, especially if accompanied by unfavorable publicity, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

***We expect to depend on consumer electronics supply chain firms to manufacture, market and distribute our technology under development. If these strategic partners fail to successfully manufacture, market and distribute our technology under development, our business will be materially harmed.***

We currently intend to license our system architecture, proprietary waveform and application specific integrated circuit design to consumer electronics supply chain firms rather than manufacture our technology under development ourselves. We will not be able to control the efforts and resources these consumer electronics supply chain firms would devote to marketing our technology under development or other future products. Those third parties may not be able to successfully market and sell the products they develop based on our technology, may not devote sufficient time and resources to support the marketing and selling efforts and may not market those products at prices that will permit the products to develop, achieve or sustain market acceptance. Finding new licensors could be an expensive and time-consuming process and we may not be able to find suitable consumer electronics supply chain firms and other distribution strategic partners on acceptable terms or at all. If we cannot find suitable third party partners or our third party partners experience difficulties, do not actively market our technology under development or future products or do not otherwise perform under our license agreements, our potential for revenue may be dramatically reduced, and our business could be harmed. We have not dedicated any resources to investigating foreign markets or planning to satisfy import or export requirements to deliver our product to consumers or businesses outside the U.S.

***We intend to pursue licensing of our technology as a primary means of commercialization but we may not be able to secure advantageous license agreements. If we are not able to secure advantageous license agreements, our business and results of operations will be adversely affected.***

We intend to pursue licensing of our technology as a primary means of commercialization. We believe there are many companies that could be interested in implementing our technology into their devices. Many of these companies are well-known, world-wide companies. To date we do not have any specific business relationships with any potential licensees. Creating a license or other business relationship with these classes of companies will take a substantial effort, as we expect to have to convince them of the efficacy of our technology, meet their design and manufacturing requirements, satisfy their marketing and product needs, and comply with their selection, review and contracting requirements. There can be no assurance that we will be able to gain entry to these companies, or that they will ultimately decide to integrate our technology with their products. We may not be able to secure license agreements with customers on terms that are advantageous to us. Furthermore, the timing and volume of revenue earned from license agreements will be outside of our control. If the license agreements we enter into do not prove to be advantageous to us, our business and results of operations will be adversely affected.

***We are highly dependent on certain key members of our executive management team. Our inability to retain these individuals could impede our business plan and growth strategies, which could have a negative impact on our business and the value of your investment.***

Our ability to implement our business plan depends, to a critical extent, on the continued efforts and services of Steve Rizzone (Chief Executive Officer), Michael Leabman (Chief Technology Officer), George Holmes (Vice President of Sales and Marketing) and Thomas Iwanski (Chief Financial Officer). If we lose the services of any of these persons, we would likely be forced to expend significant time and money in the pursuit of replacements, which may result in a delay in the implementation of our business plan and plan of operations. We can give no assurance that we could find satisfactory replacements for these individuals on terms that would not be unduly expensive or burdensome to us. We do not currently carry a key-man life insurance policy that would assist us in recouping our costs in the event of the death or disability of either of these executives.

### **Risks Related to this Offering and Owning Our Common Stock**

***As an investor, you may lose all of your investment.***

Investing in our common stock involves a high degree of risk. As an investor you may never recoup all, or even part of, your investment and you may never realize any return on your investment. You must be prepared to lose all of your investment.

***Prior to the completion of our initial public offering, there was no public trading market for our common stock.***

The offering under this prospectus is an initial public offering of our securities. Prior to the closing of the offering, there will have been no public market for our common stock. While we plan to list our common stock on the Nasdaq Capital Market, we cannot assure you that our listing application will be approved, and that a public market for our common stock will develop. If our Nasdaq listing application is not approved, we will not complete the offering.

***We are an "emerging growth company" under the JOBS Act of 2012 and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.***

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to, not being required to comply with the auditor attestation requirements of section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an “emerging growth company” for up to five years, although we will lose that status sooner if our revenues exceed \$1 billion, if we issue more than \$1 billion in non-convertible debt in a three year period, or if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of any June 30.

***Our status as an “emerging growth company” under the JOBS Act of 2012 may make it more difficult to raise capital as and when we need it.***

Because of the exemptions from various reporting requirements provided to us as an “emerging growth company,” we may be less attractive to investors and it may be difficult for us to raise additional capital as and when we need it. Investors may be unable to compare our business with other companies in our industry if they believe that our reporting is not as transparent as other companies in our industry. If we are unable to raise additional capital as and when we need it, our financial condition and results of operations may be materially and adversely affected.

***If a public market for our common stock develops, it may be volatile. This may affect the ability of our investors to sell their shares as well as the price at which they sell their shares.***

If a market for our common stock develops, the market price for the shares may be significantly affected by factors such as variations in quarterly and yearly operating results, general trends in the alternative energy industry, and changes in state or federal regulations affecting us and our industry. Furthermore, in recent years the stock market has experienced extreme price and volume fluctuations that are unrelated or disproportionate to the operating performance of the affected companies. Such broad market fluctuations may adversely affect the market price of our common stock, if a market for it develops.

***We have not paid dividends in the past and have no immediate plans to pay dividends.***

We plan to reinvest all of our earnings, to the extent we have earnings, in order to market our products and to cover operating costs and to otherwise become and remain competitive. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend. Therefore, you should not expect to receive cash dividends on the common stock we are offering.

***Concentration of ownership among our existing executive officers, directors and significant stockholders may prevent new investors from influencing significant corporate decisions.***

All decisions with respect to the management of the Company will be made by our board of directors and our officers, who, before this offering, beneficially own 28.2% of our common stock, as calculated in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934. After the issuance of our common stock in this offering and the conversion of the Convertible Notes, management will beneficially own 8.6% of our common stock, as calculated in accordance with Rule 13d-3. In addition, before this offering DvineWave Holdings LLC beneficially owns 71.1% of our common stock and after this offering will beneficially own 21.5% of our common stock, as calculated in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our Company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

***We will incur significant increased costs as a result of becoming a public company that reports to the Securities and Exchange Commission and our management will be required to devote substantial time to meet compliance obligations.***

As a public company reporting to the Securities and Exchange Commission, we will incur significant legal, accounting and other expenses that we did not incur as a private company. We will be subject to reporting requirements of the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002, as well as rules subsequently implemented by the Securities and Exchange Commission that impose significant requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. In addition, on July 21, 2010, the Dodd-Frank Wall Street Reform and Protection Act was enacted. There are significant corporate governance and executive compensation-related provisions in the Dodd-Frank Act that are expected to increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and may also place undue strain on our personnel, systems and resources. Our management and other personnel will need to devote a substantial amount of time to these new compliance initiatives. In addition, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers.

***Assuming a market for our common stock develops, shares eligible for future sale may adversely affect the market for our common stock.***

After [●], 2014, we have agreed to register for resale 2,249,910 shares of common stock expected to be issued upon conversion of our senior secured convertible promissory notes and 461,561 shares of common stock underlying warrants. Furthermore, from time to time after we become subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) for at least 90 days, certain of our stockholders may be eligible to sell all or some of their shares of common stock by means of ordinary brokerage transactions in the open market pursuant to Rule 144, promulgated under the Securities Act, subject to certain limitations. In general, pursuant to Rule 144, non-affiliate stockholders may sell freely after six months subject only to the current public information requirement (which disappears after one year). Of the 8,958,124 shares of our common stock expected to be outstanding following completion of the offering, approximately 6,284,774 shares will be held by “non-affiliates” and will be freely tradable without restriction pursuant to Rule 144, although 34,864 shares of common stock held by non-affiliates will be subject to a one year lock-up that will end on the first anniversary of the execution of the underwriting agreement entered into in connection with this offering.

Any substantial sale of our common stock pursuant to Rule 144 or pursuant to any resale prospectus (including sales by investors of securities acquired in connection with this offering) may have a material adverse effect on the market price of our common stock.

***We may allocate the net proceeds from this offering in ways that differ from the estimates discussed in the section titled “Use of Proceeds” and with which you may not agree.***

The allocation of net proceeds of the offering set forth in the “Use of Proceeds” section below represents our estimates based upon our current plans and assumptions regarding industry and general economic conditions, and our future revenues and expenditures. The amounts and timing of our actual expenditures will depend on numerous factors, including market conditions, cash generated by our operations, business developments and related rate of growth. We may find it necessary or advisable to use portions of the proceeds from this offering for other purposes. Circumstances that may give rise to a change in the use of proceeds and the alternate purposes for which the proceeds may be used are discussed in the section entitled “Use of Proceeds” below. You may not have an opportunity to evaluate the economic, financial or other information on which we base our decisions on how to use our proceeds. As a result, you and other stockholders may not agree with our decisions. See “Use of Proceeds” for additional information.

***You will experience immediate dilution in the book value per share of the common stock you purchase.***

Because the price per share of our common stock being offered is substantially higher than the book value per share of our common stock, you will experience substantial dilution in the net tangible book value of the common stock you purchase in this offering. Based on the offering price of \$5.00 per share, if you purchase shares of common stock in this offering, you will experience immediate and substantial dilution of \$2.78 per share in the net tangible book value of the common stock at September 30, 2013. See the section titled “Dilution” below for a more detailed discussion of the dilution you will incur if you purchase common stock in this offering.

***Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable.***

Upon the closing of this offering, provisions of our Certificate of Incorporation (“Certificate”) and bylaws and applicable provisions of Delaware law may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our Certificate and bylaws:

- limit who may call stockholder meetings;
- do not provide for cumulative voting rights; and
- provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

In addition, once we become a publicly traded corporation, Section 203 of the Delaware General Corporation Law may limit our ability to engage in any business combination with a person who beneficially owns 15% or more of our outstanding voting stock unless certain conditions are satisfied. This restriction lasts for a period of three years following the share acquisition. These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock. See “Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Charter Documents” for additional information.

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND OTHER INFORMATION CONTAINED IN THIS PROSPECTUS**

This prospectus contains forward-looking statements. Forward-looking statements give our current expectations or forecasts of future events. You can identify these statements by the fact that they do not relate strictly to historical or current facts. You can find many (but not all) of these statements by looking for words such as “approximates,” “believes,” “hopes,” “expects,” “anticipates,” “estimates,” “projects,” “intends,” “plans,” “would,” “should,” “could,” “may” or other similar expressions in this prospectus. These statements may be found under the sections entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” included in this prospectus, as well as in this prospectus generally. In particular, these include statements relating to future actions, prospective products, applications, customers, technologies, future performance or results of anticipated products, expenses, and financial results. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our historical experience and our present expectations or projections. Factors that could cause actual results to differ from those discussed in the forward-looking statements include, but are not limited to:

- our limited cash and a history of losses;
- our ability to achieve profitability;
- our limited operating history;
- emerging competition and rapidly advancing technology;
- customer demand for the products we develop;
- our ability to secure required FCC or other governmental approvals;
- the impact of competitive or alternative products, technologies and pricing;
- our ability to successfully license any products we develop to consumer electronics supply chain firms;
- general economic conditions and events and the impact they may have on us and our potential customers;
- the adequacy of protections afforded to us by the patents that we own and the cost to us of maintaining, enforcing and defending those patents;
- our ability to obtain, expand and maintain patent protection in the future, and to protect our non-patented intellectual property;
- our exposure to and ability to defend third-party claims and challenges to our patents and other intellectual property rights;
- our ability to obtain adequate financing in the future;
- our ability to continue as a going concern;
- our success at managing the risks involved in the foregoing items; and
- other factors discussed in the “Risk Factors” section of this prospectus.

The forward-looking statements are based upon management’s beliefs and assumptions and are made as of the date of this prospectus. We undertake no obligation to publicly update or revise any forward-looking statements included in this prospectus or to update the reasons why actual results could differ from those contained in such statements, whether as a result of new information, future events or otherwise, except to the extent required by federal securities laws. Actual future results may vary materially as a result of various factors, including, without limitation, the risks outlined under the section entitled “Risk Factors” and matters described in this prospectus generally. In light of these risks and uncertainties, we cannot assure you that the forward-looking statements contained in this prospectus will in fact occur. You should not place undue reliance on these forward-looking statements.



## BUSINESS

### Our Company

We are a development stage technology company. We are developing technology that can enable wireless charging or powering of electronic devices at distance. We believe our technology is a novel approach, in that it charges or powers devices by surrounding them with a three dimensional (“3D”) pocket of energy formed by radio frequencies (“RF pocket”). In our laboratory, our prototype devices have enabled wireless transmission of energy from a transmitter (similar in size and shape to a Wi-Fi router) to multiple receiver circuits at a distance of up to 15 feet. If the receiver chip we expect to develop is integrated into a low-power (under 10 watts) electronic device, the chip should be able to utilize the received energy to either power the device directly or charge the battery that powers the device. We are also developing management and control of our solution through a software application that will ultimately reside on the device being charged. We believe that if our development efforts are successful, our transmitter/receiver solution will initially be able to power or charge multiple electronic devices at up to 1.5 watts at distances of up to 30 feet. Subsequent development efforts will focus on increasing the charging wattage, increasing the distance of charging, enhancing reliability, enhancing management and control of the solution and reducing design cost.

In our operating history, we have developed a beta system consisting of a base station transmitter, a smart phone receiver case, receiver circuits and management software. In addition, we have designed and submitted for manufacturing an application specific integrated circuit (“ASIC”) to optimize our transmitter technology. Furthermore, we have designed, but not yet submitted for manufacturing, an ASIC to optimize our receiver technology. In connection with the receiver technology, we have designed multiple smart phone charging cases, which are still under development. Complementing our hardware designs, we have developed a software application that we believe allows for management, control, statistics and prioritization of the charging for the remote devices via a smartphone, tablet or PC.

We have pursued an aggressive intellectual property strategy and are developing new patents. As of December 9, 2013, we have 38 pending U.S. patents and provisional patent applications. Thus far we have identified more than 80 specific inventions we believe to be novel and patentable, and we intend to continue filing these inventions for patent protection.

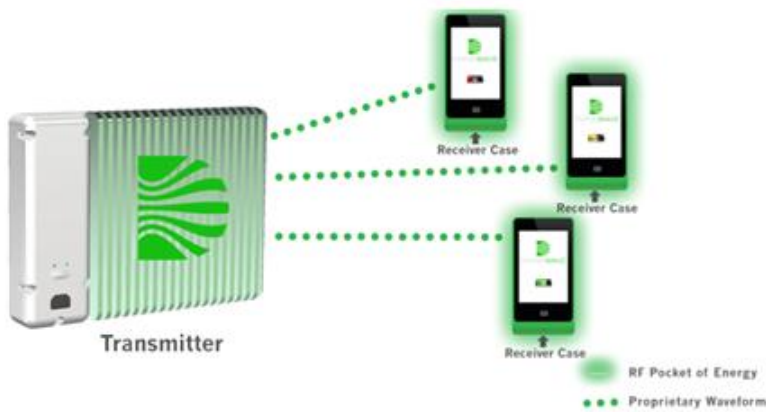
Importantly, we have recruited and hired a seasoned management team with public company and relevant industry experience to develop and execute the company’s operating plan. In addition, we have hired and have identified additional engineering resources which are expected to engage with the Company to build up the engineering capability of the internal team. Finally, we have identified and started the selection process for our independent board of directors whom we believe will provide valuable assistance to the Company in terms of industry credibility, corporate governance, and strategic direction. We were incorporated in Delaware in October 2012. Our corporate headquarters is at 303 Ray Street, Pleasanton, CA 94566. Our website can be accessed at [www.dvinewave.com](http://www.dvinewave.com). The information contained on, or that may be obtained from our website is not, and shall not be deemed to be, part of this prospectus.

### Our Technology

The remote charging solution we are developing employs 3D “pocketforming” via a transmitter which creates a mobile, target specific area (“RF pocket”) in a room around a receiving device which may be mobile or fixed.

Figure 1 below shows a simple diagram of our solution. Today this solution is able to send wattage from the transmitter to individual receiver boards in our laboratory.

Figure 1: Our Remote Charging Solution Diagram



First, our proprietary transmitter locates the client receiver(s) in a 3-dimensional space. Next, the transmitter generates a proprietary waveform to create an RF pocket around the client receiver(s). We expect that the receiver chips that we intend to develop will gather power from this RF pocket. We believe that these proposed receiver chips will then be able to either charge rechargeable-battery devices or power low-power devices, such as smart phones, tablets, keyboards, mice, remote controls, rechargeable lights or any other device with similar charging requirements that would otherwise need a battery or a connection to a power outlet.

Our transmitter uses proprietary software algorithms to dynamically direct, focus and control our proprietary waveform in three dimensions. This control allows for very efficient transmission of energy to a moving object (such as a mobile phone in a user's pocket).

Figure 2 below shows our prototype transmitter in its current enclosure. This enclosure has dimensions of approximately 12" x 8.5" x 2".

Figure 2: Prototype Transmitter in Plastic Enclosure



Figure 3 below shows internal and external views, respectively, of the front and back of a smart phone case that integrates our receiver technology and will, if used with our transmitter within the appropriate range, wirelessly charge a smart phone.

Figure 3: Front and back of our smart phone cover with embedded DvineWave receiver technology



Below, in Figure 4, are additional receiver devices under development, including e-book reader and universal receiver.

Figure 4: Computer generated images of additional devices under development



Currently, our demonstration system is able to output wattage to three devices at a distance of 15 feet with the ability to refocus the RF pocket within 1 second. While our demonstration system employs off-the-shelf components, we are developing several ASICs that we believe will enable our future system designs to deliver multiple watts at a distance of up to 30 feet, and to refocus the RF pocket within fractions of a second. We believe our ASICs in development will allow us to significantly reduce our transmitter size and costs and achieve higher delivered power.

We submitted our first design to our ASIC manufacturer in November 2013. We expect to receive the ASIC in our laboratory in late February 2014, for production of our initial ASIC after which it will be tested by our team and, if deemed acceptable by us, integrated into a newly designed prototype transmitter unit. Depending on the results of the initial transmitter ASIC and adequate funding, we expect to submit our second transmitter ASIC design for manufacturing in June 2014. Additional ASIC designs and manufacturing will be scheduled based upon the performance, attributes and cost efficiencies of each prior ASIC as determined by us.

## Our Competition

There are numerous existing, widely commercially available methods to provide power to rechargeable low-power fixed and mobile devices, including wall plug-in recharging, inductive recharging, power-mat recharging, battery recharging stations and more. To our knowledge, almost all mobile consumer electronic devices equipped with a rechargeable battery come bundled with a method to recharge the device (for example, a power cord). This bundling makes the bundled recharging system effectively free to the user. We are depending on the development of a market that will sufficiently value the convenience of wireless recharging to pay the additional cost to purchase our remote charging solutions.

We believe that the main advantage of our remote charging technology, as compared to traditional charging technologies, will be the ability to charge multiple devices anywhere within the charging area (expected to be up-to 30 feet) without the use of a charging pad. We believe our technology is unique and flexible allowing us to target a fixed or mobile device, track that device if it moves or is moving, and focus and transmit pockets of energy to the targeted device to charge the device without having to remove the battery or plug in the device.

We are not currently aware of any company or researcher looking to develop a 3-D pocket-forming approach similar to our remote charging technology. However, there are other wireless charging technologies on the market today. These fall into the following categories:

**Magnetic Induction:** Magnetic Induction is the most commercially available wireless charging technology, and has been available for 10+ years in products such as rechargeable electric toothbrushes. It uses a magnetic coil to create resonance, which can transmit energy over very short distances. Magnetic induction delivers power as a function of coil size (the larger the coil, the more power), which must be directly paired (one receiver coil to one transmitter coil = directly coupled pair) over a typical distance of less than 1 inch.

The companies that have launched products using this technology are members of the wireless Power Consortium (Qi) and the Power Matters Alliance (PMA), the most prominent company being PowerMat. There is a new consortium called Alliance for Wireless Power (A4WP) which is working on a new inductive transmitter which uses overlapping coils in the transmitter, so that one transmitter will support multiple receivers over distances of less than 10 inches. Though we are not aware of a commercial product that utilizes the A4WP standard, prominent companies that are part of the A4WP consortium include Broadcom, HTC, and Intel.

**Magnetic Resonance:** Magnetic Resonance is similar to magnetic induction, as it uses coils to transmit energy. This technology uses coils that range in size depending on the power being transmitted and has the ability to transmit power up to ~11 inches (30CM) which can be increased with the use of resonance repeaters.

We are aware of only one company working with magnetic resonance, which is WiTricity. WiTricity has evaluation systems available for purchase but we are not aware of any sales to commercial customers.

**Conductive:** Conductive wireless charging (or simply conductive charging) uses conductive power transfer to eliminate wires between the charger (often a charging mat) and the charging device. It requires the use of a charging board as the power transmitter to deliver the power, and a charging device, with a built-in receiver, to receive the power. This technology requires direct metal contact between the charging board and the receiver. Once the charging board recognizes the valid receiver, the charging begins.

The company that commercialized this technology was PureEnergy (formerly WildCharge), which brought the technology to market under its own brand and under license to Duracell and RadioShack. In 2011, Duracell terminated its license with PureEnergy and partnered with PowerMat to bring to market an inductive solution. To our knowledge, RadioShack has since exited the conductive charging sector.

**RF Harvesting:** At the core of what we are doing at DvineWave is the harvesting of RF energy. These approaches typically utilize directional antennas to target and deliver energy. To our knowledge, there are only two other companies attempting to utilize a directional pocket of energy similar to that being developed by DvineWave.

PowerCast was the first company to commercialize RF harvesting. PowerCast products deliver only milliwatts of power at distances of up to 30 feet, so they are targeted for use in extremely low-power applications (such as radio frequency identification (“RFID”) tags).

A new entrant into the RF-Harvesting space is Ossia. Ossia, which is developing a product under the name Cota, has received some recent press coverage with a large 4’ x 8’ proof-of-concept transmitter that utilizes roughly 200 individually controlled antennas. In demonstrations, Ossia has been able to show Cota delivering wireless power at an unspecified level to a smart phone.

**Laser:** This technology uses very short wavelengths of light to create a collimated beam that maintains its size over distance, using what is described as distributed resonance to deliver power to an optical receiver.

There are two companies that are currently developing wireless power solutions using laser technology. LaserMotive & Wi-Charge are both working to commercialize laser-based solutions.

**Ultrasound:** This technology converts electric energy into acoustic energy in the form of ultrasound waves. Then it reconverts those waves through an “energy-harvesting” receiver. The challenge with this technology is that acoustic energy only goes in a straight line and any obstacles in the path will drastically reduce performance.

Ubeam is the only company we have identified that is working with this technology.

## **Our Business Strategy**

We intend to license our solution to the designers of devices that would benefit from remote charging. We intend to pursue this licensing path because we believe there are several market verticals to which our technology can apply, and we believe that this is the most capital-efficient manner in which we can address many of them at once.

In addition, we believe that our greatest market opportunity is to create a standard protocol for wireless charging at a distance, in much the same way that Wi-Fi is the standard for wireless data. The goal is to ensure interoperability between base stations and receivers that are based on our technology, regardless of who made them, installed them into finished goods, or marketed them. The implementation of previous standards such as Wi-Fi and Bluetooth should help to illustrate our goal; Wi-Fi routers, regardless of their designer or manufacturer, work with Wi-Fi receivers installed in various consumer electronic devices, regardless of the manufacturer.

In order to make our solution the standard for charging at distance, we intend to pursue an ecosystem strategy for our solution, engaging not only potential licensees for our base station and transmitter, but also their upstream and downstream value chain partners. We also intend to prioritize protecting our intellectual property portfolio, as we believe that keeping a firm grasp on that will make it less likely that a competing platform will be able to compete with our technology in a “standards battle.”

We believe strategic relationships with key licensees will enable us to reap the benefits of our technology much faster, with greater penetration, than by manufacturing, distributing or installing products ourselves. We believe this business model will also allow us to concentrate our efforts and resources on projects more in line with our expertise as a research-and-development oriented company that is focused on generating licensable intellectual property. As we develop new applications for our technology, we expect to target new strategic relationships in different market sectors.

In order to demonstrate the capability of our technology to potential partners, we are currently developing complete products, which our licensees modify and remanufacture to fit their own needs. These products are what are known as “reference designs” of our integrated solution. These reference designs will be licensed to key potential partners, which we believe will allow them to speed up incorporation of technology into their product lines, create awareness and demand, and bring our power solution to market faster. Our initial reference designs currently under development are being designed for use with smart phones and e-book readers. However, we believe that there is a wide variety of potential uses for our proprietary technology, including tablets, keyboards, mice, remote controls, rechargeable lights or any other device with similar charging requirements that would otherwise need a battery or a connection to a power outlet.

Since we are a development stage company, we have not yet finalized some aspects of our strategy. For example, we may decide to sell our ASICs ourselves, rather than licensing the design of those ASICs. The decision to sell ASICs would be dependent on the business case evaluation of our perceived market demand for our ASIC to potential customers who would require such a component in order to provide their solution to the marketplace. However, we do not intend to manufacture our own ASICs; if we decide to sell ASICs rather than license their designs, we will utilize a contract manufacturer to manufacture the ASICs. In any event, we do not intend to produce finished goods consumer products.

### **Our Initial Target Markets**

We believe that our technology will be compelling to many end markets, each of which may have several potential customers. In an effort to focus our activities, we have selected certain initial target markets based on the potential value we would be able to create in these markets. As we continue to develop our technology, we may find that it creates more value in other markets; if that is the case, we intend to shift our focus to those other markets. As we have already discussed, our solution consists of two components: our base station and our receiver. Consequently, we view our initial target markets in these two categories.

#### ***Base Station Target Markets***

##### Wi-Fi Routers

We believe that consumers will be best able to understand our technology in the context of the wireless data industry, since our technology allows devices to receive power while unplugged in much the same way that the Wi-Fi router allowed devices to receive data while unplugged. In addition, we believe our base station technology can integrate well into form factors of a similar size to that of existing wireless data routers. Our current prototype is approximately 12” X 8.5” X 2”, which is slightly larger than a typical commercial wireless data router; after our transmitter ASIC is complete, we expect to be able to integrate our technology into the form factor demanded by branded consumer electronics router marketers. We also believe that our 3-D pocketforming technology may be able to enhance the data signal of a Wi-Fi router, which we believe will provide an even stronger value proposition to wireless data router manufacturers.

According to Infonetics Research, the wireless local area network (“WLAN”) market was approximately \$4 billion in 2012. This includes enterprise access points, WLAN controllers, and Wi-Fi access points. The Wi-Fi router market has two segments: commercial and residential. The key differentiator between these segments is that commercial routers tend to have much more robust security features, including virtual private networks and advanced content filtering. We believe that our technology is applicable to both the commercial and residential Wi-Fi router markets. Consequently, we have begun to engage with some of these leading firms in both of these segments.

In addition, the Wi-Fi router market has other key players. These include consumer electronics supply chain firms, including OEMs, ODMs, component manufacturers and branded consumer electronics firms. We believe that each of these categories of players can help to integrate our technology into a commercially available Wi-Fi router.

An ODM designs products either collaboratively with their customers or on their own and manufactures them for sale to companies under the end customer's brand. Additionally, an ODM may engage multiple companies with similar designs that are then marketed under several different end customers' brands. An OEM manufactures products for sale under another firm's brand. We believe that engaging with both types of organizations will be necessary to speed our entry into the market and extend our market reach.

Component suppliers are also a key part of our go-to-market strategy, as most ODMs and OEMs do not design their own components. We expect to be actively engaged with component companies that supply antennas, mixed signal, power and RF components to the major ODM and OEMs in the Wi-Fi router market.

As part of our go-to-market strategy, we will be marketing to major infrastructure developers, both for the consumer and commercial applications. The consumer market will primarily include engagements with the major residential home builders. For commercial installations, we will be engaging with wireless network operators and private Wi-Fi system operators. We will also be engaging with concentrated consumer destinations (for example, coffee shop and restaurant chains, airport lounges and airports). We will be educating these concentrated consumer destinations on the benefits of our solutions to drive them to specify and demand our solution from their vendors and suppliers.

### ***Receiver Target Markets***

#### Cases for Mobile Devices (Phones and Tablets)

We believe that aftermarket cases for mobile devices (which include both phones and tablets) are an attractive initial market for our receiver. This is because this market is large and growing. According to ABI Research, the smartphone accessory market (which includes headphones and chargers as well as cases) was \$20 billion in 2012. According to the NPD Group, the mobile phone case industry was approximately 36% of the overall mobile phone market for the first half of 2012. If both of these estimates are correct, the smartphone case market was approximately \$7 billion in 2012. According to the NPD Group, this market grew 69% year-over-year from the first half of 2011 to the first half of 2012.

In addition, this is a fiercely competitive market, with dozens of players looking for a way to differentiate themselves. There are hundreds of different types of mobile phone cases that range in price from under \$10 to over \$100, and are made of materials from simple polymers to full-grain leather. Some of these cases differentiate themselves by being thin and light, while others differentiate themselves by providing advanced features such as external battery packs, waterproofing or credit card slots. We believe that this competition makes it more likely that we will be able to find a partner that chooses to differentiate itself by licensing our technology. We have begun to engage some of the leading firms in this space in our initial conversations.

We further believe that this is an attractive market because the design cycles for these cases tend to be much shorter than those for the devices themselves. Though our longer-term goal remains integrating our receiver technology into the mobile devices themselves (through the branded consumer electronics firms that market them or the OEM or ODM that manufactures them), we believe that initially putting our receivers into cases will provide industry validation and "pull" our technology into the original manufacture of mobile devices.

#### Mobile Devices (Phones and Tablets)

Our medium-term goal is to be "pulled" into original manufacture of mobile devices because we believe our technology scales well into that market; while there are potentially dozens of licensees for phone cases, as discussed above, there are relatively fewer and larger manufacturers of mobile devices. In January 2013, Gartner estimated that the size of the smart phone industry was approximately \$117.5 billion in 2012, and would grow to approximately \$175.4 billion in 2016 (which would represent a compound annual growth rate of approximately 10.5%). Gartner also estimated that the size of the combined media tablet and premium tablet industry was approximately \$32 billion in 2012, and would grow to approximately \$62.8 billion in 2016 (which would represent a compound annual growth rate of 19.5%).

The major issue we confront in having our receiver integrated into mobile devices is that building relationships with branded consumer electronics firms and their large OEM/ODM partners is complicated, because these firms tend to be risk-averse.

Therefore, we believe that our best strategy in approaching these firms is to also build relationships across the value chain of these devices. We believe that triangulating mobile device branded consumer electronics firms and their OEM/ODM partners across their value chains is the best route to providing them with comfort that our solution will work for their devices.

We have identified the key players in this value chain. We categorize these players as upstream providers (which produce components for OEMs and ODMs, such as baseband integrated circuits, application processors, Bluetooth modules, memory and batteries), midstream providers (which assemble devices for branded firms and test components for OEMs and ODMs) and downstream providers (which provide end-use services for consumers of devices sold by branded consumer electronics firms and include telecom operators and channel distributors). We have begun to engage key players in each of these segments.

### ***Other Markets***

We believe there are many more potential markets for our technology in the longer term. We are pursuing a licensing strategy so that we can bring our technology to multiple markets simultaneously.

Some potential long-term markets for our technology include:

- Light switches
- Audio speakers
- Sensors (such as thermostats or smoke detectors)
- Remote controls
- Toys
- Rechargeable batteries
- Automotive accessories
- Personal care products (such as toothbrushes or shavers)
- Retail inventory management (such as RFID tags)
- Hand-held industrial devices (such as scanners or keypads)
- Hand-held healthcare devices (such as tablets or electronics thermometers)

This list is meant for illustrative purposes only; we cannot guarantee that we will address any of these markets, and we may decide to address a market that is not on the above list. We intend to continuously evaluate our target markets and choose new markets based on factors including (but not limited to) time-to-market, market size and growth, and the strength of our value proposition for a specific application.

### **Our Intellectual Property**

As a company primarily focused on licensing, we expect that our most valuable asset will be our intellectual property. This includes U.S. and foreign patents, patent applications and know-how. We are pursuing an aggressive intellectual property strategy and developing new patents.

As of December 9, 2013, we have 38 pending U.S. patents and provisional patent applications. Thus far we have identified more than 80 specific inventions we believe to be novel and patentable, and we intend to continue filing these inventions for patent protection.

### **Government Regulation**

Our remote charging technology involves the transmission of power using RF energy waves, which are subject to regulation by the Federal Communications Commission ("FCC"), and may be subject to regulation by other federal, state and local agencies. To our knowledge, the transmission of power in this manner by a consumer product at the ranges we are proposing is novel. We believe our technology is safe, and we intend to demonstrate that to the FCC as soon as practicable.

We believe our technology is safe because our proprietary waveform operates in the 2.4/5.8 GHz radio frequency range, which is the same range as Wi-Fi routers and several other wireless consumer electronics. For those types of products, the FCC grants what is known as Part 15 approval if, among other things, the specific absorption rate ("SAR") is below certain thresholds. Based on our preliminary calculations, the SAR at our receiver should be well below that of a typical cellular signal, so we believe we will be able to gain FCC Part 15 approval for each of our reference designs currently in development. In addition, because our technology involves the transmission of power greater than the power threshold limits of Part 15, we also expect to need to obtain FCC Part 18 approval. To our knowledge, the transmission of power in this manner by a consumer product at the ranges we are proposing is novel and there can be no assurance that we will be able to obtain this approval or that other governmental approvals will not be required.

We also plan to combat any perception of safety risk by developing the management software of our transmitter to be configurable by users to selectively transmit power to devices based on the device's proximity to the human body, such as only transmitting during certain times or transmitting only when the device is not moving. We do not believe users will need to use that configuration to ensure safety, and we expect that we will get FCC approval that will confirm our belief. However, we believe that offering that configuration option will assuage users who need more assurance on safety.

### **Employees**



As of December 9, 2013, we had 7 full-time employees. None of these employees are covered by a collective bargaining agreement, and we believe our relationship with our employees is good. We also employ consultants, including technical advisors, on an as-needed basis to supplement existing staff. Consultants and technical advisors provide us with expertise in electrical engineering, software development, and other specialized areas of engineering and science.

**Industry Certifications**

It is our expectation that our products and/or the reference designs will undergo UL/CE as well as FCC Part 15, FCC Part 18, SAR, California Energy Star and Apple compliance testing. While this list of required certifications may change or expand from time to time, it is our expectation, based on similar products and designs developed by our team, that completing these certification tests will be conducted as part of the Company's standard course of business and planning process.

**Properties**

Our principal office is located at 303 Ray Street, Pleasanton, CA 94566. We currently lease approximately 3500 square feet of office and laboratory space under a lease that is due to expire in June 2014. The rent is approximately \$6,000 per month.

**Legal Proceedings**

We are not a party to any pending legal proceedings.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the section of this prospectus titled "Summary Selected Financial Information" and our financial statements and related notes appearing elsewhere in this prospectus. In addition to historical information, this discussion and analysis here and throughout this prospectus contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited, to those set forth under "Risk Factors" and elsewhere in this prospectus.*

### Overview

We were incorporated in Delaware on October 30, 2012. We were formed to develop and commercialize our technology, which enables wireless charging of electronic devices at a distance. We are located in Pleasanton, CA. To date, our operations have been funded through the sale of our common stock and convertible debt. We have not generated any revenue to date.

We intend to license our technology to various consumer electronics companies, including component manufacturers, OEMs, ODMs and branded consumer electronics firms. We believe strategic relationships with key consumer electronics supply chain licensees will enable us to reap the benefits of our technology much faster than by manufacturing, distributing or installing products ourselves.

In our operating history, we have developed a beta system consisting of a base station transmitter, a smart phone receiver case, receiver circuits and management software. In addition, we have designed and submitted for manufacturing an application specific integrated circuit ("ASIC") to optimize our transmitter technology. Furthermore, we have designed, but not yet submitted for manufacturing, an ASIC to optimize our receiver technology. In connection with the receiver technology, we have designed multiple smart phone charging cases, which are still under development. Complementing our hardware designs, we have developed a software application that we believe allows for management, control, statistics and prioritization of the charging for the remote devices via a smartphone, tablet or PC.

We have pursued an aggressive intellectual property strategy and are developing new patents. As of December 9, 2013, we have 38 pending U.S. patents and provisional patent applications. Thus far we have identified more than 80 specific inventions we believe to be novel and patentable, and we intend to continue filing these inventions for patent protection.

We have recruited and hired a seasoned management team with public company and relevant industry experience to develop and execute our operating plan. In addition, we have hired and have identified additional engineering resources, which we expect will build up the engineering capability of our internal team. Finally, we have started the selection process for the independent members of our board of directors, which we intend to rely upon for valuable assistance in terms of industry credibility, corporate governance, and strategic direction.

Our financial statements contemplate the continuation of our business as a going concern. We are subject to the risks and uncertainties associated with a new business, including lack of operating capital, lack of personnel and lack of demand for our products. We are a development stage company and have not yet generated any revenue, have no established source of capital, and we have incurred significant debt and significant losses from operations since inception. These matters raise substantial doubt about our ability to continue as a going concern.

### Plan of Operation

Our strategy is to continue to focus on the development of our remote charging technology with our current goal being to license this technology to consumer electronics supply chain firms, toys and other devices that would benefit from remote charging. We expect to use the net proceeds received from this offering to continue our remote charging technology development, develop product reference designs, complete certification testing, protect our intellectual property, pursue licensing partners and for working capital and other general corporate purposes. The net proceeds from this offering are anticipated to be approximately \$17.25 million, which we expect to be sufficient to fund our activities through August 31, 2015. We intend to use the net proceeds from our sale of common stock in this offering as follows: approximately \$10.3 million will be used for product research, development, reference design development and product certifications, approximately \$0.7 million will be used for the protection of our intellectual property, approximately \$2.8 million will be used for sales and marketing activities, approximately \$0.8 million will be used for the purchase of fixed assets which consists primarily of computer equipment and software, and the balance of the funds will be used for general and administrative expenses and other general corporate purposes. Our anticipated costs include employee salaries and benefits, compensation paid to consultants and independent contractors, capital costs for research and other equipment, cost for ASIC manufacturing and testing, cost associated with governmental certification testing, costs associated with development activities including travel and administration, legal expenses, sales and marketing costs, general and administrative expenses, and other costs associated with an early stage, publicly-traded technology company. We anticipate increasing the number of employees by up to approximately 39 employees; however, this is highly dependent on the progress of our development efforts. We anticipate adding employees in the areas of research and development, sales and marketing, operations and general and administrative functions required to support our efforts. We expect to incur consulting expenses related to technology development and other efforts as well as legal and related expenses to protect our intellectual property. We expect annual capital expenditures to be approximately \$0.5 million and \$0.3 million for 2014 and 2015, respectively.

The amounts that we actually spend for any specific purpose may vary significantly and will depend on a number of factors including, but not limited to, the pace of progress of our development and licensing efforts, unexpected difficulties arising in the process of protecting our intellectual property, market conditions, and changes in or revisions to our marketing strategies. In addition, we may use a portion of any net proceeds to acquire complementary products, technologies or businesses; however, we do not have plans for any acquisitions at this time. We will have significant discretion in the use of any net proceeds. Investors will be relying on the judgment of our management regarding the application of the proceeds of any sale of our common stock.

## **CRITICAL ACCOUNTING POLICIES**

The following discussion and analysis of financial condition and results of operations is based upon our financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by our management or can be materially affected by changes from period to period in economic factors or conditions that are outside of our control. As a result, they are subject to an inherent degree of uncertainty. In applying these policies, our management uses their judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, our future business plans and projected financial results, the terms of existing contracts, our observance of trends in the industry, information provided by our customers and information available from other outside sources, as appropriate. Please see Note 3 to our financial statements for a more complete description of our significant accounting policies.

*Basis of Presentation.* Our financial statements have been prepared in conformity with accounting principles generally accepted in the United States, which contemplate continuation of the Company as a going concern. However, we are subject to the risks and uncertainties associated with a new business, we have limited sources of revenue, and we have incurred significant losses from operations since inception. Our operations are dependent upon it raising additional capital. These matters raise substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that could result from the outcome of this uncertainty.

*Research and Development.* Research and development expenses are charged to operations as incurred. For internally developed patents, all costs incurred to the point when a patent application is to be filed are expensed as incurred as research and development expense. Patent application costs, generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain.

*Income Taxes.* The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of items that have been included or excluded in the financial statements or tax returns. Deferred tax assets and liabilities are determined on the basis of the difference between the tax basis of assets and liabilities and their respective financial reporting amounts (“temporary differences”) at enacted tax rates in effect for the years in which the temporary differences are expected to reverse. For the period October 30, 2012 (inception) through December 31, 2012, the Company had approximately \$17,000 of research and development expenses capitalized for federal income tax purposes, with amortization commencing upon the Company receiving an economic benefit from the related research and \$4,000 of organization costs capitalized, to be amortized for federal income tax purposes over 15 years. Accordingly, as of December 31, 2012, the Company had no gross federal and state net operating loss carryovers (“NOLs”). For the period October 30, 2012 (inception) through December 31, 2012, the deferred tax assets in connection with the research and development costs and the organizational costs were fully reserved, and the Company’s effective tax rate was 0%.

In its interim financial statements the Company follows the guidance in ASC 270 “Interim Reporting” and utilized the expected annual effective tax rate in determining its income tax provision for the interim period.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the future generation of taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and taxing strategies in making this assessment. Based on this assessment, management has established a full valuation allowance against all of the net deferred tax assets for each period, since it is more likely than not that all of the deferred tax assets will not be realized.

Tax benefits are recognized only for tax positions that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for “unrecognized tax benefits” is recorded for any tax benefits claimed in the Company’s tax returns that do not meet these recognition and measurement standards. As of December 31, 2012, no liability for unrecognized tax benefits was required to be reported. The guidance also discusses the classification of related interest and penalties on income taxes. The Company’s policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties were recorded during the period ended December 31, 2012.

*Convertible Instruments.* The Company accounts for hybrid contracts that feature conversion options in accordance with ASC 815 “Derivatives and Hedging Activities,” (“ASC 815”) and ASC 480 “Distinguishing Liabilities from Equity” (“ASC 480”), which require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria includes circumstances in which (i) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (ii) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (iii) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. The Company accounts for convertible instruments that have been determined to be free standing derivative financial instruments (when the Company has determined that the embedded conversion options should be bifurcated from their host instruments) in accordance with ASC 815. Under ASC 815, a portion of the proceeds received upon the issuance of the hybrid contract are allocated to the fair value of the derivative. The derivative is subsequently marked to market at each reporting date based on current fair value, with the changes in fair value reported in results of operations.

Conversion options that contain variable settlement features such as provisions to adjust the conversion price upon subsequent issuances of equity or equity linked securities at exercise prices more favorable than that featured in the hybrid contract generally result in their bifurcation from the host instrument.

The Company accounts for convertible debt instruments, when the Company has determined that the embedded conversion options should not be bifurcated from their host instruments, in accordance with ASC 470-20 "Debt with Conversion and Other Options". The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. Debt discounts under these arrangements are amortized under the effective interest method over the term of the related debt.

*Common Stock Purchase Warrants and Other Derivative Financial Instruments.* The Company classifies as equity any contracts that (i) require physical settlement or net-share settlement or (ii) provides a choice of net-cash settlement or settlement in the Company's own shares (physical settlement or net-share settlement) providing that such contracts are indexed to the Company's own stock as defined in ASC 815-40 "Contracts in Entity's Own Equity" ("ASC 815-40"). The Company classifies as assets or liabilities any contracts that (i) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the Company's control) or (ii) gives the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement). The Company assesses classification of common stock purchase warrants and other free standing derivatives at each reporting date to determine whether a change in classification between assets and liabilities or equity is required.

## **RESULTS OF OPERATIONS**

*Revenues.* To date we have not generated any revenues.

*Operating Expenses and Loss from Operations.* Operating expenses are made up of derivative issuance, research, development and general and administrative and marketing expenses. Operating expenses and loss from operations for the period October 30, 2012 (inception) through December 31, 2012 were \$21,287. Operating expenses for the nine months ended September 30, 2013 were \$2,747,929. Operating expenses for the period October 30, 2012 (inception) through September 30, 2013 were \$2,769,216. General and administrative expenses include costs for general and corporate functions, including facility fees, travel, telecommunications, insurance, professional fees, consulting fees and other overhead.

*Change in Fair Value of Derivative Liabilities.* Change in fair value of derivative liabilities for the period ended October 30, 2012 (inception) through December 31, 2012 was \$0. Change in fair value of derivative liabilities for the nine months ended September 30, 2013 and for the period October 30, 2012 (inception) through September 30, 2013 was \$111,500.

*Interest Expense.* Interest expense for the period October 30, 2012 (inception) through December 31, 2012 was \$0. Interest expense for the nine months ended September 30, 2013 and for the period October 30, 2012 (inception) through September 30, 2013 was \$383,380, which included \$262,506 for the amortization of the discount on the Convertible Notes.

*Net Loss.* Net loss for the period October 30, 2012 (inception) through December 31, 2012 was \$21,287. Net loss for the nine months ended September 30, 2013 was \$3,242,809. Net loss for the period October 30, 2012 through September 30, 2013 was \$3,264,096.

### **Liquidity and Capital Resources**

As of December 31, 2012 and September 30, 2013, the Company's cash on hand was \$994 and \$3,854,489, respectively. The Company has not generated revenues since its inception and has incurred net losses of \$21,287 for the period October 30, 2012 (inception) through December 31, 2012, \$3,242,809 for the nine months ended September 30, 2013 and \$3,264,096 for the period October 30, 2012 (inception) through September 30, 2013. During the nine months ended September 30, 2013, the Company has met its liquidity requirements principally through the private placement of convertible notes. As of December 31, 2012, the Company had a working capital deficiency and a stockholders' deficit of \$11,287. As of September 30, 2013, the Company had a working capital deficiency and a stockholders' deficit of \$3,073,761 and \$3,053,415, respectively.

During the period October 30, 2012 (inception) through December 31, 2012, cash flows used in operating activities were \$9,006, consisting of a net loss of \$21,287 less \$1,875 and \$10,406 representing increases in accounts payable and accrued expenses, respectively. During the nine months ended September 30, 2013, cash flows used in operating activities were \$1,825,969, consisting of a net loss of \$3,242,809 less non-cash expenses aggregating \$1,098,886 (representing principally amortization of debt discount of \$262,506, warrant expense of \$724,000 and change in fair value of derivative liabilities of \$111,500), offset by net changes in operating assets and liabilities of \$317,954. During the period October 30, 2012 (inception) through September 30, 2013, cash flows used in operating activities were \$1,834,975, consisting of a net loss of \$3,264,096 less non-cash expenses aggregating \$1,098,886 (representing principally amortization of debt discount of \$262,506, warrant expense of \$724,000 and change in fair market value of derivative liabilities of \$111,500), offset by net changes in operating assets and liabilities of \$330,235.

During the period October 30, 2012 (inception) through December 31, 2012, during the nine months ended September 30, 2013 and during the period October 30, 2012 (inception) through September 30, 2013, cash flows from investing activities were \$0, \$21,226 and \$21,226, respectively. The increase for the nine months ended September 30, 2013 and during the period October 30, 2012 (inception) through September 30, 2013, consisted of \$16,501 and \$4,725 for the costs incurred for the purchase of property and equipment and the costs to develop a trademark, respectively.

During the period October 30, 2012 (inception) through December 31, 2012, cash flows from financing activities were \$10,000 and consisted of proceeds from the sale of the Company's common stock. For the nine months ended September 30, 2013, cash flows from financing activities were \$5,700,690 and consisted of \$5,500,009 in proceeds from the issuance of Convertible Notes and \$200,681 in proceeds from the sale of the Company's common stock. During the period October 30, 2012 (inception) through September 30, 2013, cash flows from financing activities were \$5,710,690 and consisted of \$5,500,009 in proceeds from the issuance of Convertible Notes and \$210,681 in proceeds from the sale of the Company's common stock.

### **Off Balance Sheet Transactions**

We do not have any off-balance sheet transactions.

### **Trends, Events and Uncertainties**

Research and development of new technologies is, by its nature, unpredictable. Although we will undertake development efforts with commercially reasonable diligence, we do not expect that the net proceeds from this offering will be sufficient to enable us to develop our technology to the extent needed to create future revenues to sustain operations as contemplated herein. If the net proceeds from this offering are insufficient for this purpose, we will consider other options to continue our path to commercialization, including, but not limited to, additional financing through follow-on stock offerings, debt financing, co-development agreements, curtailment of operations, suspension of operations, sale or licensing of developed intellectual or other property, or other alternatives.

We cannot assure you that our technology will be adopted, that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. Furthermore, since we have no committed source of financing, we cannot assure you that we will be able to raise money as and when we need it to continue our operations. If we cannot raise funds as and when we need them, we may be required to severely curtail, or even to cease, our operations.

Other than as discussed above and elsewhere in this prospectus, we are not aware of any trends, events or uncertainties that are likely to have a material effect on our financial condition.



## DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The following table sets forth the names and ages of all of our directors and executive officers. Our officers are appointed by, and serve at the pleasure of, the board of directors.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Stephen R. Rizzone	64	President, Chief Executive Officer and Chairman
Michael Leabman	40	Chief Technology Officer and Director
Thomas Iwanski	55	Chief Financial Officer
George B. Holmes	50	Vice President of Sales and Marketing
Gregory S. Brewer	50	Director

Biographical information with respect to our executive officers and directors is provided below. There are no family relationships between any of our executive officers or directors.

### **Stephen R. Rizzone – President, Chief Executive Officer and Chairman**

Mr. Stephen R. Rizzone joined the Company as President, Chief Executive Officer and chairman of the board of directors in October 2013. Mr. Rizzone has more than 35 years of executive management, marketing, sales and entrepreneurial experience in the data communications hardware, networking hardware and software, silicon and optical components markets. Prior to joining the Company, Mr. Rizzone served as Chief Executive Officer and chairman of the board of directors of Active Storage, Inc. from June 2011 until December 2012 and as the Chief Executive Officer and chairman of the board of directors of Comunicado, Inc. from April 2006 to September 2009. Mr. Rizzone previously served as member of the board of directors of Katzkin Leather from June 2011 to November 2013 and the Los Angeles Regional Technology Alliance (LARTA) from February 2009 to November 2011. Mr. Rizzone holds a BA in Public Administration from California State University at Fullerton. Mr. Rizzone's extensive industry, executive and board experience position him well to serve as our Chief Executive Officer and a member of our board of directors.

### **Michael Leabman – Chief Technology Officer, Director and Founder**

Mr. Leabman founded the Company in October 2012 and became the Company's Chief Technology Officer in October 2013. Mr. Leabman has been a member of the Company's board of directors since its founding and served as the Company's President, Chief Financial Officer, Treasurer and Secretary until October 2013. From September 2010 to September 2013, Mr. Leabman served as President of TruePath Wireless, a service provider and equipment provider in the broadband communications industry. Mr. Leabman has served on the board of directors of TruePath Wireless since 2010 and continues to serve on the board today. From 2008 to 2010, Mr. Leabman served as Chief Technology Officer for DataRunway Inc., a wireless communication company providing broadband internet to airlines. Mr. Leabman received both his Bachelor of Science degree and Master of Engineering degree in electrical engineering from the Massachusetts Institute of Technology. Mr. Leabman's extensive knowledge the Company, its technology and the consumer and commercial electronics industry position him well for service on our board of directors.

### **Thomas Iwanski – Chief Financial Officer**

Mr. Iwanski joined the Company in October 2013 as a financial consultant and in December 2013 was appointed Chief Financial Officer. Mr. Iwanski has more than 23 years (18 years of which were with publicly traded companies) of executive management and financial experience in the data communications hardware, networking and storage hardware and software, silicon and optical components markets in addition to almost 10 years of prior auditing experience at KPMG LLP. Mr. Iwanski was self-employed as a financial consultant from May 2007 until he joined the Company. In addition, Mr. Iwanski has served as an independent director at Pacific Health Care Organization, Inc. a publicly traded healthcare management and claims administration company, since 2004. Mr. Iwanski filed a personal bankruptcy petition in June 2013 in connection with alleged guarantees of debt of Live-Vu Communications, Inc., a private company in which Mr. Iwanski made a significant personal investment and for which he served as a key consultant, officer and director. Mr. Iwanski holds a bachelor of business administration with a major in accounting from the University of Wisconsin-Madison and is a Certified Public Accountant.

### **George Holmes – Vice President of Sales and Marketing**

Mr. Holmes joined the Company as Vice President of Sales and Marketing in October 2013. Prior to joining the Company, Mr. Holmes served as Vice President of Sales at SolarBridge Technologies from February 2011 until June 2013 where he was responsible for all sales, business development, applications and sales operations activities for the company. Mr. Holmes served as Senior Vice President Sales and Marketing from January 2008 until December 2010 for PureEnergy Solutions, a developer and manufacturer of wireless power products. Since 2007, Mr. Holmes has served as been a partner at aAgave Solutions, LLC, a provider of sales at marketing consulting services. He has served in strategic executive management and sales roles for companies including PowerCast, X1 Technologies, Agere Systems (formerly Lucent MicroElectronics), Ortel Corp. (acquired by Lucent), Level One Communications and Symmetricom. Mr. Holmes holds a B.A. in business from the University of Puget Sound, a diploma in international business from Nyenrode University and has completed the AEA Executive Institute, Management of Technology Companies program at Stanford University.

### **Gregory S. Brewer – Director**

Mr. Brewer has been a member of the board of directors of the Company since October 2012. Mr. Brewer is the Chief Executive Officer and Chairman of Prosoft Engineering, Inc., a software company focused on data recovery software and other utilities which help protect and manage personal data. Mr. Brewer founded Prosoft Engineering in 1985 and beyond executive and board leadership his responsibilities have included software/firmware engineering, project and product management, partnership development, strategic alliance and mergers and acquisitions. Mr. Brewer’s extensive leadership and operational experience in the computing industry, including his extensive knowledge of the development and sale of computing peripherals, position him well for service on our board of directors.

### **Director Independence**

Our board of directors has determined that [●],[●] and [●] are “independent directors” as such term is defined by Nasdaq Marketplace Rule 5605(a)(2). We have established an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each of [●],[●] and [●] serve as members of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee. Our board of directors has determined that [●] is an audit committee financial expert, as defined under the applicable rules of the SEC, and that all members of the Audit Committee are “independent” within the meaning of the applicable Nasdaq listing standards and the independence standards of rule 10A-3 of the Securities Exchange Act of 1934. Each of the members of the Audit Committee meets the requirements for financial literacy under the applicable rules and regulations of the SEC and The Nasdaq Stock Market.

## EXECUTIVE COMPENSATION

Our compensation philosophy is to offer our executive officers compensation and benefits that are competitive and meet our goals of attracting, retaining and motivating highly skilled management, which is necessary to achieve our financial and strategic objectives and create long-term value for our shareholders. We believe the levels of compensation we provide should be competitive, reasonable and appropriate for our business needs and circumstances. The principal elements of our executive compensation program have to date included base salary, and long-term equity compensation in the form of stock options. We believe successful long term Company performance is more critical to enhancing shareholder value than short term results. For this reason and to conserve cash and better align the interests of management and our shareholders, we emphasize long-term performance-based equity compensation over base annual salaries.

### 2012 Compensation

Michael Leabman, our Chief Technology Officer, is the only person that served as an executive officer of our Company during the fiscal year ended December 31, 2012. Mr. Leabman earned no compensation for his services to our Company in 2012.

### Employment Agreements and 'Change of Control Arrangements

#### *Employment Agreements*

The following is a summary of the employment arrangements with our executive officers as currently in effect.

**Stephen Rizzone.** We entered into an employment agreement with Stephen Rizzone, our President, Chief Executive Officer and chairman of our board of directors, effective October 1, 2013. The employment agreement has no specific term and constitutes at-will employment. Mr. Rizzone's current annual base salary is \$150,000, although his annual base salary will increase to \$300,000 immediately following our initial public offering, and he is eligible for up to five annual cash bonuses of up to \$30,000 each (one each with respect to our fiscal quarters and one with respect to our fiscal year) based upon achievement of performance-based objectives established by our board of directors. Pursuant to Mr. Rizzone's employment agreement, he was granted a ten year option to purchase 275,689 shares of common stock on December 12, 2013 under our 2013 Equity Incentive Plan that vests over four years in 48 equal monthly installments. Mr. Rizzone's employment agreement provides that upon the consummation of our initial public offering he will receive an additional option award so that together with Mr. Rizzone's December 2013 option award the two option awards combined represent six percent (6%) of the Company's outstanding shares on a fully-diluted basis. The second option award, if issued, will vest over the same vesting schedule as Mr. Rizzone's December, 2013 option award.

If Mr. Rizzone's employment is terminated due to his death or disability, by the Company without cause or if Mr. Rizzone resigns for good reason, Mr. Rizzone will be entitled to receive (i) one year of his base salary at the rate then in effect, (ii) five performance bonuses (each equal to the average of the performance bonus paid with respect to the two fiscal quarters, or the fiscal quarter-end and fiscal year-end, as applicable, immediately preceding Mr. Rizzone's termination or resignation) (iii) reimbursement of Mr. Rizzone's cost of COBRA coverage for one year, and (iv) twenty-five percent (25%) of the options to purchase shares of common stock subject to Mr. Rizzone's option awards described above will vest immediately and become exercisable, and, along with any previously vested and unexercised options, may be exercised by Mr. Rizzone within one year following his termination or resignation. However, if a Liquidation Event (as defined below) shall occur within one year of Mr. Rizzone's termination without cause or his resignation for good reason, all of Mr. Rizzone's option awards described above will vest immediately and become exercisable.

Mr. Rizzone's employment agreement provides that if the Company experiences a Liquidation Event (as defined below), Mr. Rizzone's employment with the Company will be terminated and the Company will enter into a consulting agreement with Mr. Rizzone that entitles him to the following during its term: (i) continued payment of Mr. Rizzone's base salary at the rate then in effect, (ii) continued payment of Mr. Rizzone's performance bonuses described above, and (iii) continued payment of benefits that are substantially similar to those of the Company's other senior executive officers, and (iv) continuation of the vesting period of the option awards described above. The term of the consulting agreement between the Company and Mr. Rizzone shall expire on the later of two years from the date of the Liquidation event or October 1, 2017. For purposes of Mr. Rizzone's employment agreement, a Liquidation Event means a merger, acquisition, consolidation or other transaction (other than an equity financing) following which our stockholders prior to such transaction hold less than fifty percent (50%) of our outstanding voting securities of the acquiring or surviving entity, or a sale, license or transfer of all or substantially all of our assets.

If Mr. Rizzone resigns without good reason, he will be entitled to his base salary at the rate then in effect up to and through the effective date of his resignation, along with any unreimbursed reasonable, out-of-pocket business expenses incurred by Mr. Rizzone in the performance of his duties.

Mr. Rizzone is also eligible to receive benefits that are substantially similar to those of the Company's other senior executive officers. Mr. Rizzone is subject to certain restrictive covenants, including non-solicitation of employees, consultants and customers and non-competition each for a period one year following termination of his employment with the Company.

**Michael Leabman.** We entered into an employment agreement with Michael Leabman, our Chief Technology Officer, effective October 1, 2013. The employment agreement has no specific term and constitutes at-will employment. Mr. Leabman's current annual base salary is \$250,000, and he is eligible for an annual performance based bonus award of up to twenty percent (20%) of his base salary based upon achievement of performance-based objectives established by our Chief Executive Officer and board of directors. Pursuant to Mr. Leabman's employment agreement, he is entitled to a ten year option to purchase 57,644 shares of common stock under our 2013 Equity Incentive Plan that vests over four years in 48 equal monthly installments. Mr. Leabman's employment agreement provides that upon the consummation of our initial public offering, if Mr. Leabman's option award plus any Company securities he currently owns represent less than three percent (3%) of the Company's outstanding shares on a fully-diluted basis, he shall be entitled to a second option award which will entitle him to purchase that number of shares of our common stock such that the two option awards combined plus any Company securities he currently owns represent three percent (3%) of the Company's outstanding shares on a fully-diluted basis. The second option award, if issued, will vest over the same vesting schedule as Mr. Leabman's initial option award.

If Mr. Leabman's employment is terminated due to his death or disability, by the Company without cause or if Mr. Leabman resigns for good reason, Mr. Leabman will be entitled to receive (i) one year of his base salary at the rate then in effect, (ii) a performance bonuses each equal to the total performance bonuses paid to Mr. Leabman in the calendar year immediately preceding Mr. Leabman's termination or resignation (iii) reimbursement of Mr. Leabman's cost of COBRA coverage for one year, and (iv) twenty-five percent (25%) of the options to purchase shares of common stock subject to Mr. Leabman's option awards described above will vest immediately and become exercisable, and, along with any previously vested and unexercised options, may be exercised by Mr. Leabman within one year following his termination or resignation. However, if a Liquidation Event (as defined below) shall occur within one year of Mr. Leabman's termination without cause or his resignation for good reason, all of Mr. Leabman's options to purchase shares of common stock pursuant to the option awards described above will vest immediately and become exercisable.

In addition to those benefits described above, if Mr. Leabman's employment is terminated by the Company without cause or he resigns for Good Reason within 18 months of a Liquidation Event (as defined below), all of Mr. Leabman's options to purchase shares of common stock pursuant to the option awards described above will vest immediately and become exercisable. For purposes of Mr. Leabman's employment agreement, a Liquidation Event has the same meaning as in Mr. Rizzone's employment agreement.

If Mr. Leabman resigns without good reason, he will be entitled to his base salary at the rate then in effect up to and through the effective date of his resignation, along with any unreimbursed reasonable, out-of-pocket business expenses incurred by Mr. Leabman in the performance of his duties.

Mr. Leabman is also eligible to receive benefits that are substantially similar to those of the Company's other senior executive officers. Mr. Leabman is subject to certain restrictive covenants, including non-solicitation of employees, consultants and customers and non-competition each for a period one year following termination of his employment with the Company.

**Thomas Iwanski and George Holmes.** Mr. Iwanski and Mr. Holmes are currently providing services to the Company pursuant to consulting arrangements under which they are being paid \$12,500 and \$10,000 per month, respectively.

#### **Outstanding Equity Awards at December 31, 2012**

Our Named Executive Officers did not hold any outstanding equity awards at December 31, 2012.

#### **Director Compensation**

Members of our board of directors did not receive compensation for their service as directors for the year ended December 31, 2012. We currently do not have a policy governing the compensation of our non-employee directors. However, we expect to establish a non-employee director compensation policy that includes both equity and cash components.

## DESCRIPTION OF CAPITAL STOCK

The following is a brief description of our capital stock. This summary does not purport to be complete in all respects. This description is subject to and qualified entirely by the terms of our Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), and our bylaws, copies of which have been filed with the SEC and are also available upon request from us.

### Authorized Capitalization

We have 40,000,000 shares of capital stock authorized under our Certificate of Incorporation, consisting of 40,000,000 shares of common stock with a par value of \$0.00001 per share. As of December 12, 2013, we had 2,708,214 shares of common stock outstanding. Our authorized but unissued shares of common stock are available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded.

### Common Stock

Holders of our common stock are entitled to such dividends as may be declared by our board of directors out of funds legally available for such purpose. The shares of common stock are neither redeemable nor convertible. Holders of common stock have no preemptive or subscription rights to purchase any of our securities.

Each holder of our common stock is entitled to one vote for each such share outstanding in the holder's name. No holder of common stock is entitled to cumulate votes in voting for directors.

In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive pro rata our assets, which are legally available for distribution, after payments of all debts and other liabilities. All of the outstanding shares of our common stock are fully paid and non-assessable. The shares of common stock offered by this prospectus will also be fully paid and non-assessable.

There is no public market for our common stock. We will apply for listing of our common stock on the Nasdaq Capital Market, and listing on this exchange is a condition to the consummation of this offering.

### Stock Options and Warrants

As of December 12, 2013, we had reserved the following shares of common stock for issuance pursuant to stock option and warrant agreements:

- 275,689 shares of our common stock for issuance under stock option agreements at a weighted average exercise price of \$1.68 per share;
- 461,561 shares of common stock for issuance under outstanding warrants at a weighted average exercise price of \$1.22 per share;
- 766,478 shares of our common stock for future issuance under our 2013 Equity Incentive Plan (including 122,806 shares reserved for issuance pursuant to offer letters and employment agreements).

Holders of our outstanding warrants are entitled to one-time demand registration rights and certain piggyback registration rights with respect to the shares of common stock issuable upon exercise thereof.

## Convertible Promissory Notes

We have issued \$5.5 million in senior secured convertible promissory notes that bear simple interest at 6% and must be paid or converted into shares of our common stock on or before August 16, 2014. We refer to these promissory notes as the “Convertible Notes” in this prospectus. Upon consummation of a public offering of our common stock yielding gross proceeds of at least \$10 million in this offering, all of the outstanding principal and interest accrued on the Convertible Notes will be converted in full into shares of our common stock. Assuming that this offering was completed on September 30, 2013, based on interest accrued through such date the Convertible Notes would have been converted into 2,249,910 shares of our common stock. Because interest that accrues after September 30, 2013 will also be converted, the actual number of shares to be issued upon conversion of the Convertible Notes will exceed this number of shares of common stock. Holders of the Convertible Notes are entitled to one-time demand registration rights and certain piggyback registration rights with respect to the shares of common stock issuable upon conversion thereof.

## Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Charter Documents

The following is a summary of certain provisions of Delaware law, our Certificate of Incorporation and our bylaws. This summary does not purport to be complete and is qualified in its entirety by reference to the corporate law of Delaware and our Certificate of Incorporation and bylaws.

*Effect of Delaware Anti-Takeover Statute.* We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination (as defined below) with any interested stockholder (as defined below) for a period of three years following the date that the stockholder became an interested stockholder, unless:

- prior to that date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares of voting stock outstanding (but not the voting stock owned by the interested stockholder) those shares owned by persons who are directors and officers and by excluding employee stock plans in which employee participants do not have the right to determine whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to that date, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines “business combination” to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

- subject to limited exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation, or who beneficially owns 15% or more of the outstanding voting stock of the corporation at any time within a three-year period immediately prior to the date of determining whether such person is an interested stockholder, and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

*Effect of California Corporation Long-Arm Statute.* We are a Delaware corporation, governed by the Delaware General Corporation Law; however, our headquarters, property and officers are located in California. Section 2115 of the California Corporations Code (the “California Corporation Long-Arm Statute”) purports to impose on corporations like the Company certain portions of California’s laws governing corporations formed under the laws of the State of California. While disputes have arisen regarding the enforceability of the California Corporation Long-Arm Statute, the statute purports to apply the California Corporations Code in the following areas of governance to corporations that meet the test for applicability for the California Corporation Long-Arm Statute: Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions; Section 301 (annual election of directors); Section 303 (removal of directors without cause); Section 304 (removal of directors by court proceedings); Section 305, subdivision (c) (filling of director vacancies where less than a majority in office elected by shareholders); Section 309 (directors’ standard of care); Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions); Section 317 (indemnification of directors, officers, and others); Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property); Section 506 (liability of shareholder who receives unlawful distribution); Section 600, subdivisions (b) and (c) (requirement for annual shareholders’ meeting and remedy if same not timely held); Section 708, subdivisions (a), (b), and (c) (shareholder’s right to cumulate votes at any election of directors); Section 710 (supermajority vote requirement); Section 1001, subdivision (d) (limitations on sale of assets); Section 1101 (provisions following subdivision (e)) (limitations on mergers); Section 1151 (first sentence only) (limitations on conversions); Section 1152 (requirements of conversions); Chapter 12 (commencing with Section 1200) (reorganizations); Chapter 13 (commencing with Section 1300) (dissenters’ rights); Sections 1500 and 1501 (records and reports); Section 1508 (action by Attorney General); Chapter 16 (commencing with Section 1600) (rights of inspection).

We believe it is likely that we meet the test for the application of the California Corporation Long-Arm Statute and do not anticipate a specific time in the future when we would not meet such test. The California Corporation Long-Arm Statute, if applicable, would purport to require a different outcome for certain important activities fundamental to the governance of corporations, and you are encouraged to review the effect of the California Long-Arm Statute to determine whether the differences from the Delaware General Corporation Law are important to you.

*Our Charter Documents.* Our charter documents include provisions that may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by our stockholders. Certain of these provisions are summarized in the following paragraphs.

*Effects of authorized but unissued common stock.* One of the effects of the existence of authorized but unissued common stock may be to enable our board of directors to make more difficult or to discourage an attempt to obtain control of our Company by means of a merger, tender offer, proxy contest or otherwise, and thereby to protect the continuity of management. If, in the due exercise of its fiduciary obligations, the board of directors were to determine that a takeover proposal was not in our best interest, such shares could be issued by the board of directors without stockholder approval in one or more transactions that might prevent or render more difficult or costly the completion of the takeover transaction by diluting the voting or other rights of the proposed acquirer or insurgent stockholder group, by putting a substantial voting block in institutional or other hands that might undertake to support the position of the incumbent board of directors, by effecting an acquisition that might complicate or preclude the takeover, or otherwise.



*Cumulative Voting.* Our Certificate of Incorporation does not provide for cumulative voting in the election of directors, which would allow holders of less than a majority of the stock to elect some directors.

*Vacancies.* Our Certificate of Incorporation provides that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

*Special Meeting of Stockholders.* A special meeting of stockholders may only be called by the President, the Chief Executive Officer, or the board of directors at any time and for any purpose or purposes as shall be stated in the notice of the meeting, or by request of the holders of record of at least 10% of the outstanding shares of common stock. This provision could prevent stockholders from calling a special meeting because, unless certain significant stockholders were to join with them, they might not obtain the percentage necessary to request the meeting. Therefore, stockholders holding less than 10% of the issued and outstanding common stock, without the assistance of management, may be unable to propose a vote on any transaction that would delay, defer or prevent a change of control, even if the transaction were in the best interests of our stockholders.

#### **MARKET FOR OUR COMMON STOCK, DIVIDEND POLICY AND OTHER STOCKHOLDER MATTERS**

There is no established public trading market for our common stock. We have never paid cash dividends on our securities and we do not anticipate paying any cash dividends on our shares of common stock in the foreseeable future. We intend to retain any future earnings for reinvestment in our business. Any future determination to pay cash dividends will be at the discretion of our board of directors, and will be dependent upon our financial condition, results of operations, capital requirements and such other factors as our board of directors deems relevant.

We will apply for the listing of our common stock on the Nasdaq Capital Market but we cannot assure you that our application will be approved. If our application is not approved, we will not complete the offering.

As of December 12, 2013, we had 2,708,214 shares of common stock outstanding, held of record by five stockholders.

The name, address and telephone number of our stock transfer agent is [●].

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

We have set forth in the following table certain information regarding our common stock beneficially owned by (i) each stockholder we know to be the beneficial owner of 5% or more of our outstanding common stock, (ii) each of our directors and named executive officers, and (iii) all executive officers and directors as a group. Generally, a person is deemed to be a “beneficial owner” of a security if that person has or shares the power to dispose or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which the person has the right to acquire beneficial ownership within 60 days pursuant to options, warrants, conversion privileges or similar rights. Unless otherwise indicated, ownership information is as of December 12, 2013, and is based on 2,708,214 shares of common stock outstanding on that date. The percentage ownership after the offering is based on 8,958,124 shares of common stock outstanding.

Name and Address of Beneficial Owner (1)	Number of Shares Beneficially Owned (2)	Percentage of Class Prior to the Offering	Percentage of Class After the Offering
<b>Directors and Executive Officers</b>			
Gregory Brewer	668,337(3)	24.7%	7.5%
George Holmes	-	*	*
Thomas Iwanski	-	*	*
Michael Leabman	80,201(4)	3.0%	*
Stephen Rizzone	22,974(5)	*	*
Directors and Executive Officers as a group (5 persons)	771,512	28.2%	8.6%
<b>Five Percent Stockholders</b>			
DvineWave Holdings LLC (6)	1,924,812	71.1%	21.5%
Absolute Ventures LLC (7)	668,337	24.7%	7.5%

(1) Except as set forth below, the address of each officer and director and 5% owner is 303 Ray Street, Pleasanton, CA, 94566.

(2) Beneficial ownership is determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934, as amended, and is generally determined by voting powers and/or investment powers with respect to securities. Unless otherwise noted, the shares of common stock listed above are owned as of December 12, 2013, and are owned of record by each individual named as beneficial owner and such individual has sole voting and dispositive power with respect to the shares of common stock owned by each of them.

(3) Includes 668,337 shares of common stock held by Absolute Ventures, LLC.

(4) Does not include options required to be issued to Mr. Leabman pursuant to his employment agreement described above See “Executive Compensation” for additional information.

(5) Includes 22,974 shares subject to options to purchase common stock.

(6) DvineWave Holdings LLC was formed by the parents of Mr. Leabman to make an investment in the Company when it was founded. DvineWave Irrevocable Trust dated December 12, 2012 is the manager of DvineWave Holdings LLC. Gregory Tamkin, the trustee of the DvineWave Irrevocable Trust, has sole voting and investment power with respect to the entity’s shares of common stock. The address is for DvineWave Holdings LLC is 8010 East Cedar Ave, Denver CO 80230.

(7) Gregory Brewer, a director of the Company, has sole voting and investment power with respect to Absolute Ventures, LLC's shares of common stock. The address for Absolute Ventures, LLC is 1599 Greenville Road, Livermore, CA 94568.

#### CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

We will apply for the listing of our common stock on the Nasdaq Capital Market, therefore, our determination of the independence of directors is made using the definition of "independent" contained in the listing standards of the Nasdaq Stock Market. On the basis of information solicited from each director, the board has determined that each of [●], [●] and [●] has no material relationship with the Company and is independent within the meaning of such rules.

SEC regulations define the related person transactions that require disclosure to include any transaction, arrangement or relationship in which the amount involved exceeds the lesser of \$120,000 or one percent of the average of the Company's total assets at year end for the last two completed fiscal years in which we were or are to be a participant and in which a related person had or will have a direct or indirect material interest. A related person is: (i) an executive officer, director or director nominee of the Company, (ii) a beneficial owner of more than 5% of our common stock, (iii) an immediate family member of an executive officer, director or director nominee or beneficial owner of more than 5% of our common stock, or (iv) any entity that is owned or controlled by any of the foregoing persons or in which any of the foregoing persons has a substantial ownership interest or control.

For the period from our inception, through the date of this prospectus (the "Reporting Period"), described below are certain transactions or series of transactions between us and certain related persons.

On November 8, 2012, DvineWave Holdings LLC, an entity formed by the parents of Michael Leabman, our Chief Technology Officer, to make an investment in the Company, purchased 1,924,812 shares of common stock in exchange for \$10,000.

On January 28, 2013, Mr. Leabman purchased 80,201 shares of common stock in exchange for \$417.

On March 1, 2013, Absolute Ventures LLC, an affiliate of a director of the Company, Greg Brewer, purchased 668,337 shares of common stock in exchange for \$160,000.

Set forth in the table below is information relating to stock option grants made to our executive officers. The awards were granted under our 2013 Equity Incentive Plan. The term of each grant is ten years. These option awards vest over four years in 48 equal monthly installments, beginning October 1, 2013.

<b>Name of Officer</b>	<b>Number of Option Shares</b>	<b>Exercise Price</b>
Stephen Rizzone	275,689	\$ 1.68

Certain of our current officers have executed employment agreements with us or have received shares of common stock or options to purchase common stock as compensation. Our independent directors also will receive compensation for their services to us. See the section of this prospectus titled "Executive Compensation" for a discussion of these transactions.

On October 4, 2013, we entered into a Standard Industrial/Commercial Multi-Tenant Lease with ProSoft Engineering, Inc. for our principal office space located at 303 Ray Street, Pleasanton, CA 94566. The lease covers approximately 3500 square feet of office and laboratory space and expires on June 4, 2014. The monthly rental rate under the lease is \$6,055 and the aggregate amount payable to ProSoft Engineering under the lease is approximately \$48,440 plus an additional security deposit of \$6,055. Greg Brewer, a member of our board of directors, is the owner and founder of ProSoft Engineering, Inc.

## UNDERWRITING

We are offering the shares of common stock described in this prospectus through the underwriter, MDB Capital Group, LLC, which is acting as lead managing underwriter of the offering. MDB Capital Group, LLC has rendered advisory services to us in the past and has acted as our placement agent in connection with the placement of our senior secured convertible promissory notes which was consummated in May 2013.

We have agreed to enter into an underwriting agreement with the underwriter prior to the closing of this offering. Subject to the terms and conditions of the underwriting agreement, we will agree to sell to the underwriter, and the underwriter will agree to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, as it may be supplemented, shares of common stock.

The underwriter is committed to purchase all of the common shares offered by us, other than those covered by the option to purchase additional shares described below, if they purchase any shares. The underwriting agreement provides that the underwriter's obligations to purchase shares of our common stock are subject to conditions contained in the underwriting agreement. A copy of the underwriting agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part.

We have been advised by the underwriter that the underwriter proposes to offer shares of our common stock directly to the public at the public offering price set forth on the cover page of this prospectus and to certain dealers that are members of the Financial Industry Regulatory Authority (FINRA). Any securities sold by the underwriter to such securities dealers will be sold at the public offering price less a selling concession not in excess of \$[●] per share. After the public offering of the shares, the offering price and other selling terms may be changed by the underwriter.

None of our securities included in this offering may be offered or sold, directly or indirectly, nor may this prospectus and any other offering material or advertisements in connection with the offer and sales of any of our common stock, be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons who receive this prospectus are advised to inform themselves about and to observe any restrictions relating to this offering of our common stock and the distribution of this prospectus. This prospectus is neither an offer to sell nor a solicitation of any offer to buy any of our common stock included in this offering in any jurisdiction where that would not be permitted or legal.

The underwriter has advised us that it does not intend to confirm sales to any accounts over which they exercise discretionary authority.

### Underwriting Discount and Expenses

The following table summarizes the underwriting discount and commission to be paid to the underwriter by us.

	Without Over-Allotment		With Over-Allotment	
Public offering price	\$	-	\$	-
Underwriting discount to be paid to the underwriter				
Non-accountable expense allowance				
Net proceeds, before other expenses	\$	-	\$	-

We estimate the total expenses payable by us for this offering to be approximately \$2.75 million, which amount includes (i) the underwriting discount of \$2.0 million (\$2.3 million if the underwriter's over-allotment option is exercised in full), (ii) reimbursement of the non-accountable expenses of the underwriter equal to \$175,000 (none of which has been paid in advance), including the legal fees of the underwriter being paid by us, and (iii) other estimated company expenses of approximately \$575,000, which includes legal, accounting, printing costs and various fees associated with the registration and listing of our shares. In no event will the aggregated expenses reimbursed to MDB Capital Group, LLC exceed \$175,000.

### **Over-allotment Option**

We have granted to the underwriter an option, exercisable not later than 45 days after the date of this prospectus, to purchase up to an additional 600,000 shares of our common stock (up to 15% of the shares firmly committed in this offering) at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus. The underwriter may exercise the option solely to cover over-allotments, if any, made in connection with this offering. If any additional shares of our common stock are purchased pursuant to the over-allotment option, the underwriter will offer these additional shares of our common stock on the same terms as those on which the other shares of common stock are being offered hereby.

### **Determination of Offering Price**

There is no current market for our common stock. Our underwriter, MDB Capital Group, LLC, is not obligated to make a market in our securities, and even if it chooses to make a market, can discontinue at any time without notice. Neither we nor the underwriter can provide any assurance that an active and liquid trading market in our securities will develop or, if developed, that the market will continue.

The public offering price of the shares offered by this prospectus has been determined by negotiation between us and the underwriter. Among the factors considered in determining the public offering price of the shares were:

- our history and our prospects;
- the industry in which we operate;
- our past and present operating results;
- the previous experience of our executive officers; and
- the general condition of the securities markets at the time of this offering.

The offering price stated on the cover page of this prospectus should not be considered an indication of the actual value of the shares. That price is subject to change as a result of market conditions and other factors, and we cannot assure you that the shares can be resold at or above the public offering price.

### **Underwriter Warrant**

We have agreed to issue to MDB Capital Group, LLC and its designees a warrant to purchase shares of our common stock (up to 10% of the shares of common stock sold in this offering). This warrant is exercisable at \$6.00 per share (120% of the price of the common stock sold in this offering), commencing on the effective date of this offering and expiring five years from the effective date of this offering. The warrant and the shares of common stock underlying the warrant have been deemed compensation by FINRA and are therefore subject to a 180 days lock up pursuant to Rule 5110(g)(1) of FINRA. MDB Capital Group, LLC (or permitted assignees under the Rule) will not sell, transfer, assign, pledge, or hypothecate this warrant or the securities underlying this warrant, nor will it engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of this warrant or the underlying securities for a period of 180 days from the effective date of the offering.

Pursuant to engagement agreements entered into on January 23, 2013 with MDB Capital Group, LLC, on May 16, 2013 we issued warrants to purchase an aggregate of 461,561 shares of our common stock to MDB Capital Group, LLC. These warrants are exercisable at any time commencing six months after completion of this offering through May 16, 2018. 278,228 of these warrants have an exercise price of \$0.04 per share and 183,333 of these warrants have an exercise price of \$3.00 per share. We issued these warrants to MDB Capital Group, LLC for advisory services performed prior to May 16, 2013 and private placement agency services rendered in connection with the May 16, 2013 private placement of our senior secured convertible promissory notes.

### **Lock-Up Agreements**

All of our officers, directors, employees, stockholders beneficially owning 5% or more of our common stock and MDB Capital Group, LLC (with respect to its currently held warrants originally issued on May 16, 2013) have agreed that, until the one year anniversary of the date of the Underwriting Agreement we will enter into in conjunction with this offering, they will not sell, contract to sell, grant any option for the sale or otherwise dispose of any of our equity securities, or any securities convertible into or exercisable or exchangeable for our equity securities, without the consent of MDB Capital Group, LLC (and in the case of MDB Capital Group, also the Company), except for exercise or conversion of currently outstanding warrants, options and convertible securities, as applicable; and exercise of options under our stock incentive plan (the "One Year Lock-Up"). The number of currently outstanding shares of common stock subject to the One Year Lock-Up totals 2,708,214 shares, the number of shares underlying options subject to the One Year Lock-Up totals 275,689 shares and the number of shares underlying warrants subject to the One Year Lock-Up totals 461,561 shares.

The purchasers of our senior secured convertible promissory notes are subject to lock-up requirements for periods that may last no more than 180 days following the date of this prospectus (the "180 Days Lock-Up"). The number of shares of common stock to be issued to the holders of our senior secured convertible promissory notes that will be subject to the 180 Days Lock-Up as of September 30, 2013 totals 2,249,910 shares. The warrant to purchase up to 10% of the shares of common stock sold in this offering that we have agreed to issue MDB Capital Group, LLC in connection with this offering will also be subject to the 180 Days Lock-up.

Other than in respect of the 10% warrant being issued to MDB Capital Group, LLC in connection with this offering, The underwriter may consent to an early release from the lock-up period if, in its opinion, the market for the common stock would not be adversely impacted by sales and in cases of a financial emergency of an officer, director or other stockholder. We are unaware of any security holder who intends to ask for consent to dispose of any of our equity securities during the relevant lock-up periods.

### **Indemnification**

We will agree to indemnify the underwriter against certain liabilities, including certain liabilities arising under the Securities Act, and to contribute to payments that the underwriter may be required to make for these liabilities.

### **Short Positions and Penalty Bids**

The underwriter may engage in over-allotment, syndicate covering transactions, and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of the common stock, in accordance with Regulation M under the Exchange Act.

- Over-allotment involves sales by the underwriter of shares in excess of the number of shares the underwriter is obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriter may close out any short position by either exercising its over-allotment option and/or purchasing shares in the open market.

- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriter will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which it may purchase shares through the over-allotment option. If an underwriter sells more shares than could be covered by the over-allotment option, a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if an underwriter is concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Penalty bids permit an underwriter to reclaim a selling concession from a syndicate member when the shares originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the NASDAQ Capital Market, and if commenced, they may be discontinued at any time.

Neither we nor the underwriter make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor the underwriter make any representation that the underwriter will engage in these transactions or that any transaction, once commenced, will not be discontinued without notice.

### **Electronic Distribution**

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by the underwriter, or by its affiliates. In those cases, prospective investors may view offering terms online and, depending upon the underwriter, prospective investors may be allowed to place orders online. The underwriter may agree with us to allocate a specific number of shares for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriter on the same basis as other allocations.

Other than the prospectus in electronic format, the information on the underwriter's website and any information contained in any other website maintained by the underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the underwriter in its capacity as underwriter and should not be relied upon by investors.

The underwriter's compensation in connection with this offering is limited to the fees and expenses described above under "Underwriting Discount and Expenses."

### **USE OF PROCEEDS**

We estimate the gross proceeds from the sale of 4,000,000 shares of common stock in this offering, prior to deducting underwriting discounts and commissions and the estimated offering expenses payable by us, will be approximately \$17.25 million (approximately \$19.95 million if the over-allotment option granted to the underwriter is exercised in full).

We estimate that we will receive net proceeds of approximately \$17.25 million, after deducting underwriting discounts and commissions and our underwriter's expense allowance, and other estimated expenses of approximately \$2.75 million, which includes legal, accounting, printing costs and various fees associated with the registration and listing of our shares. If the underwriter exercises its right to purchase an additional 600,000 shares of common stock to cover over-allotments, we will receive an additional approximately \$2.70 million, after deducting \$300,000 for underwriting discounts and commissions.

We intend to use the net proceeds from our sale of common stock in this offering as follows: approximately \$10.3 million will be used for product research, development, reference design development and product certifications, approximately \$0.7 million will be used for the protection of our intellectual property, approximately \$2.8 million will be used for sales and marketing activities, approximately \$0.8 million will be used for the purchase of fixed assets which consists primarily of computer equipment and software, and the balance of the funds will be used for general and administrative expenses and other general corporate purposes.

The amounts and timing of our actual expenditures will depend on numerous factors, including market conditions, results from our research and development efforts, business developments and opportunities and related sales and marketing activities. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the proceeds from this offering. We may find it necessary or advisable to use portions of the proceeds from this offering for other purposes. Circumstances that may give rise to a change in the use of proceeds and the alternate purposes for which the proceeds may be used include:

- the existence of unforeseen or other opportunities or the need to take advantage of changes in timing of our existing activities;
- the need or desire on our part to accelerate, increase, reduce or eliminate one or more existing initiatives due to, among other things, changing market conditions and competitive developments or interim results of research and development efforts;
- results from our business development and marketing efforts;
- the effect of federal, state, and local regulation on our business; and
- the presentation of strategic opportunities of which we are not currently aware (including acquisitions, joint ventures, licensing and other similar transactions).

From time to time, we evaluate these and other factors and we anticipate continuing to make such evaluations to determine if the existing allocation of resources, including the proceeds of this offering, is being optimized.

#### **CAPITALIZATION**

The following table sets forth our actual cash and cash equivalents and capitalization, each as of September 30, 2013:

- on an actual basis; and
- on a pro forma as adjusted basis to give effect to the reverse stock split, conversion of the convertible debt into common stock and issuance of the common stock offered hereby and the use of proceeds, as described in the section entitled "Use of Proceeds."



You should consider this table in conjunction with our financial statements and the notes to those financial statements included in this prospectus.

	Actual	As adjusted for the effect of the Reverse Stock Split	As adjusted for the debt conversion and the offering (1)
<b>Total debt at face value, net of debt discount</b>			
Convertible debt less debt discount	\$ 386,515	386,515	-
<b>Stockholders' equity</b>			
Common stock, par value \$0.00001 per share – 40,000,000 shares of common stock authorized at September 30, 2013; 11,101,306 shares issued and outstanding as of September 30, 2013; 2,782,282 shares issued and outstanding after giving effect to the reverse stock split; 9,032,192 shares issued and outstanding, as adjusted.	\$ 111	28	90
Additional paid-in-capital	210,570	210,653	22,960,600
Accumulated deficit	(3,264,096)	(3,264,096)	(2,895,590)
<b>Total stockholders' equity (deficit)</b>	<b>(3,053,415)</b>	<b>(3,053,415)</b>	<b>20,065,100</b>
<b>Total capitalization</b>	<b>(2,666,900)</b>	<b>(2,666,900)</b>	<b>20,065,100</b>
<b>Stockholders' equity (deficit) per share</b>	<b>\$ (0.28)</b>	<b>\$ (1.10)</b>	<b>\$ 2.22</b>

(1) Assumes that 4,000,000 shares of common stock are sold in this offering and that the net proceeds thereof are approximately \$17.25 million after deducting underwriting discounts and commissions and our estimated expenses. If the underwriter's over-allotment option is exercised in full, net proceeds will increase to approximately \$19.95 million.

#### DILUTION

On a pro forma basis after taking into account the reverse stock split, our net tangible book value as of September 30, 2013, was (\$3,058,140), or (\$1.10) per share of our common stock. Our net tangible book value per share represents our total tangible assets less total liabilities divided by the number of shares of our common stock outstanding on September 30, 2013. After giving effect to our sale of 4,000,000 shares in this offering at the public offering price of \$5.00 per share, after deducting the commissions and estimated offering expenses payable by us, and the conversion of \$5,624,776 of senior secured convertible promissory notes and accrued interest, our net tangible book value as of September 30, 2013, would have been \$20,060,375, or \$2.22 per share of our common stock. This amount represents an immediate increase in net tangible book value of \$3.32 per share to our existing stockholders and an immediate dilution in net tangible book value of \$2.78 per share to new investors purchasing shares of our common stock in this offering.

We determine dilution by subtracting the adjusted net tangible book value per share after this offering and the conversion of the convertible notes and accrued interest from the public offering price per share of our common stock. The following table illustrates the dilution in net tangible book value per share to new investors:

Public offering price		\$	5.00
Pro forma net tangible book value per share as of September 30, 2013	\$	(1.10)	
Increase per share after this offering and the conversion of the convertible notes and accrued interest	\$	3.32	
As adjusted tangible book value per share after this offering and the conversion of the convertible notes and accrued interest		\$	2.22
Dilution per share to new investors in this offering		\$	2.78

The following shares were not included in the above calculation:

- 275,689 shares of our common stock reserved for issuance under stock option agreements at a weighted average exercise price of \$1.68 per share;
- 461,561 shares of common stock reserved for issuance under outstanding warrants at a weighted average exercise price of \$1.22 per share;
- 766,478 shares of our common stock reserved for future issuance under our 2013 Equity Incentive Plan (including 122,806 shares reserved for issuance pursuant to offer letters and employment agreements);
- shares to be issued upon conversion of interest accrued on our senior secured convertible promissory notes after September 30, 2013; and
- shares of our common stock issuable upon exercise of the warrant to be issued to the underwriter representing ten percent of the number of shares offered by this prospectus.

#### LEGAL MATTERS

K&L Gates LLP, with an office at Hearst Tower, 47th Floor, 214 North Tryon Street, Charlotte, North Carolina 28202, will pass upon the validity of the shares of common stock offered by this prospectus and certain other legal matters. Golenbock Eiseman Assor Bell & Peskoe LLP, with an office at 437 Madison Avenue, New York, New York 10022-7020, is legal counsel to MDB Capital Group, LLC.

#### EXPERTS

The financial statements of DvineWave Inc. as of December 31, 2012 and for the period October 30, 2012 (Inception) through December 31, 2012 included in this prospectus have been audited by Marcum LLP, independent registered public accounting firm (which contain an explanatory paragraph related to our ability to continue as a going concern as described in Note 2 to our financial statements) as set forth in their report. We have included these financial statements in this prospectus in reliance upon the report of Marcum LLP, given on their authority as experts in accounting and auditing.

#### WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. Our SEC filings are and will become available to the public over the Internet at the SEC's website at [www.sec.gov](http://www.sec.gov). You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street N.E., Washington, D.C. 20549. You can also obtain copies of the documents upon the payment of a duplicating fee to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. Some items are omitted in accordance with the rules and regulations of the SEC. You should review the information and exhibits included in the registration statement for further information about us and the securities we are offering. Statements in this prospectus concerning any document we filed as an exhibit to the registration statement or that we otherwise filed with the SEC are not intended to be comprehensive and are qualified by reference to these filings. You should review the complete document to evaluate these statements.

#### **DISCLOSURE OF COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES**

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Company, we have been informed that in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## DvineWave Inc.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of DvineWave Inc.

We have audited the accompanying balance sheet of DvineWave Inc. (a development stage company) (the "Company") as of December 31, 2012 and the related statements of operations, changes in stockholders' deficit and cash flows for the period from October 30, 2012 (inception) through December 31, 2012. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of DvineWave Inc. (a development stage company), as of December 31, 2012, and the results of its operations and its cash flows for the period from October 30, 2012 (inception) through December 31, 2012, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, at December 31, 2012, the Company is in its development stage and has not yet generated revenues, is dependent upon future sources of equity or debt in order to fund its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans regarding those matters also are described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty

/s/ Marcum LLP  
Marcum LLP  
Melville, NY  
December 16, 2013

**DvineWave Inc.**  
**(A Development Stage Company)**  
**BALANCE SHEETS**

	<u>As of December 31,</u> 2012	<u>As of September 30,</u> 2013 <i>(Unaudited)</i>
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 994	\$ 3,854,489
Prepaid expenses and other current assets	-	28,358
Total current assets	<u>994</u>	<u>3,882,847</u>
Property and equipment, net	-	15,621
Intangible assets, net	-	4,725
Total assets	<u>\$ 994</u>	<u>\$ 3,903,193</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 1,875	\$ 175,432
Accrued expenses	10,406	167,161
Other current liabilities	-	16,000
Senior secured convertible notes, net of discount	-	386,515
Derivative liabilities	-	6,211,500
Total liabilities	<u>12,281</u>	<u>6,956,608</u>
<b>Commitments and contingencies</b>		
<b>Stockholders' deficit</b>		
Preferred Stock, \$0.00001 par value, 5,000,000 and 0 shares authorized at December 31, 2012 and September 30, 2013, respectively; no shares issued or outstanding.	-	-
Common Stock, \$0.00001 par value, 18,000,000 and 40,000,000 shares authorized at December 31, 2012 and September 30, 2013, respectively; 7,680,000 and 11,101,306 shares issued and outstanding at December 31, 2012 and September 30, 2013, respectively.	77	111
Additional paid-in capital	9,923	210,570
Deficit accumulated during the development stage	<u>(21,287)</u>	<u>(3,264,096)</u>
Total stockholders' deficit	<u>(11,287)</u>	<u>(3,053,415)</u>
Total liabilities and stockholders' deficit	<u>\$ 944</u>	<u>\$ 3,903,193</u>

**DvineWave Inc.**  
**(A Development Stage Company)**  
**STATEMENTS OF OPERATIONS**

	For the Period October 30, 2012 (Inception) through December 31, 2012	For the Nine Months ended September 30, 2013 <i>(Unaudited)</i>	For the Period October 30, 2012 (Inception) through September 30, 2013 <i>(Unaudited)</i>
<b>Operating expenses:</b>			
Derivative instrument issuance expenses	\$ -	\$ 887,062	\$ 887,062
Research and development expenses	17,103	1,019,950	1,037,053
General and administrative expenses	4,184	808,903	813,087
Marketing expenses	-	32,014	32,014
Loss from operations	<u>(21,287)</u>	<u>(2,747,929)</u>	<u>(2,769,216)</u>
<b>Other (expense) income:</b>			
Change in fair value of derivative liabilities	-	(111,500)	(111,500)
Interest expense	-	(383,380)	(383,380)
Other expense, net	-	(494,880)	(494,880)
<b>Net loss</b>	<u>\$ (21,287)</u>	<u>\$ (3,242,809)</u>	<u>\$ (3,264,096)</u>
<b>Basic and diluted net loss per common share</b>	<u>\$ -</u>	<u>\$ (0.32)</u>	
<b>Weighted average shares outstanding, basic and diluted</b>	<u>7,680,000</u>	<u>10,254,345</u>	

**DvineWave Inc.**  
**(A Development Stage Company)**  
**STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT**

	Common Stock		Additional Paid-in Capital	Deficit Accumulated During the Development Stage	Total Stockholders' Deficit
	Shares	Amount			
Balance, October 30, 2012 (inception)	-	\$ -	\$ -	\$ -	\$ -
Common stock sold on November 8, 2012 to third party investor at \$0.0013 per share	7,680,000	77	9,923	-	10,000
Net loss for the period from October 30, 2012 (inception) through December 31, 2012	-	-	-	(21,287)	(21,287)
Balance, December 31, 2012	7,680,000	77	9,923	(21,287)	(11,287)
Common stock sold on January 28, 2013 to founder at \$0.0013 per share	320,000	3	414	-	417
Common stock sold on March 4, 2013 to affiliate of a director at \$0.06 per share	2,666,666	27	159,973	-	160,000
Common stock sold on May 7, 2013 to third party investor at \$0.06 per share	80,000	1	4,799	-	4,800
Restricted common stock sold on May 14, 2013 under the 2013 Stock Plan of DvineWave, Inc., to consultant at \$0.10 per share	354,640	3	35,461	-	35,464
Net loss for the nine months ended September 30, 2013	-	-	-	(3,242,809)	(3,242,809)
<i>Balance, September 30, 2013 (Unaudited)</i>	<u>11,101,306</u>	<u>\$ 111</u>	<u>\$ 210,570</u>	<u>\$ (3,264,096)</u>	<u>\$ (3,053,415)</u>



**DvineWave Inc.**  
**(A Development Stage Company)**  
**STATEMENTS OF CASH FLOWS**

	For the Period October 30, 2012 (Inception) through December 31, 2012	For the Nine Months ended September 30, 2013 <i>(Unaudited)</i>	For the Period October 30, 2012 (Inception) through September 30, 2013 <i>(Unaudited)</i>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (21,287)	\$ (3,242,809)	\$ (3,264,096)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Depreciation and amortization	-	880	880
Amortization of debt discount	-	262,506	262,506
Warrant expense	-	724,000	724,000
Change in fair value of derivative liabilities	-	111,500	111,500
<b>Changes in operating assets and liabilities:</b>			
Prepaid expenses and other current assets	-	(28,358)	(28,358)
Accounts payable	1,875	173,557	175,432
Accrued expenses	10,406	156,755	167,161
Other current liabilities	-	16,000	16,000
Net cash used in operating activities	<u>(9,006)</u>	<u>(1,825,969)</u>	<u>(1,834,975)</u>
<b>Cash flows from investing activities:</b>			
Purchase of property and equipment	-	(16,501)	(16,501)
Costs of trademark	-	(4,725)	(4,725)
Net cash used in investing activities	<u>-</u>	<u>(21,226)</u>	<u>(21,226)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from the sale of common stock	10,000	200,681	210,681
Proceeds from the sale of senior secured convertible notes	-	5,500,009	5,500,009
Net cash provided by financing activities	<u>10,000</u>	<u>5,700,690</u>	<u>5,710,690</u>
Net increase in cash and cash equivalents	994	3,853,495	3,854,489
Cash and cash equivalents - beginning	-	994	-
Cash and cash equivalents - ending	<u>\$ 994</u>	<u>\$ 3,854,489</u>	<u>\$ 3,854,489</u>

**DvineWave Inc.**

**Notes to Condensed Financial Statements**

*For the Period Ended October 30, 2012 (inception) through December 31, 2012 and the Nine Months Ended September 30, 2013 (Information Relating to the Nine Months Ended September 30, 2013 is Unaudited)*

**Note 1 - Business Organization, Nature of Operations**

DvineWave Inc. (the "Company") was incorporated in Delaware on October 30, 2012 (inception). The Company is a development stage technology company focused on developing a solution to delivering a wireless charging system, as a means of providing convenient, adaptive wireless power charging capabilities to low power fixed and mobile devices, such as mobile phones, tablets, toys, videogame controllers, watches, remote controls, smoke alarms, window covering deployment and retraction motors, installed sensors and night and emergency lighting fixtures that use or are capable of using a rechargeable battery. The Company is targeting both consumer and commercial enterprise markets that use such rechargeable fixed and mobile devices.

As of September 30, 2013, the Company had not yet completed the development of its product and has not yet recorded any revenues. Since inception, the Company's primary activities have consisted of developing its business plan, raising capital, recruiting and hiring its executive team and developing its technology. To date, these activities have been funded through sales of its common stock and the sale of Senior Secured Convertible Notes ("Convertible Notes") (See Note 7, Private Placement).

The Company is considered to be in the development stage, and as such, the Company's financial statements are prepared in accordance with the Accounting Standards Codification ("ASC") topic 915, "Development Stage Entities." The Company is subject to all of the risks associated with development stage companies.

**Note 2 – Going Concern and Management Plans**

As of December 31, 2012 and September 30, 2013, the Company's cash on hand was \$994 and \$3,854,489, respectively. The Company has not generated revenues since its inception and has incurred a net loss of \$21,287 for the period October 30, 2012 (inception) through December 31, 2012, \$3,242,809 for the nine months ended September 30, 2013 and \$3,264,096 for the period ended October 30, 2012 (inception) through September 30, 2013. During the nine months ended September 30, 2013, the Company has met its liquidity requirements principally through the private placement of convertible notes.

As of December 31, 2012, the Company had a working capital deficiency and a stockholders' deficit of \$11,287. As of September 30, 2013, the Company had a working capital deficiency and a stockholders' deficit of \$3,073,761 and \$3,053,415, respectively.

The Company expects that the cash it has available as of December 12, 2013 will fund its operations only until May, 2014. The Company intends to raise additional capital through its initial public offering ("IPO"), though there is no assurance that it will be able to do so. These matters raise substantial doubt about the Company's ability to continue as a going concern. If the Company is unable to raise additional capital, the Company may have to curtail its research and development efforts, delay repayments of its Convertible Notes, delay payments to vendors, and/or initiate cost reductions, which would have a material adverse effect on the Company's business, financial condition and results of operations.

### **Note 3 – Summary of Significant Accounting Policies**

#### ***Basis of Presentation***

The accompanying financial statements are presented in U.S. dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”), and pursuant to the accounting and disclosure rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”).

The accompanying unaudited condensed financial statements for the nine months ended September 30, 2013 have been prepared in accordance with U.S. GAAP for interim financial information and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal accruals) considered for a fair presentation have been included. Operating results for the nine months ended September 30, 2013 are not necessarily indicative of the results that may be expected for the year ended December 31, 2013.

#### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the financial statements as well as the reported expenses during the reporting periods.

The Company’s significant estimates and assumptions include the valuation of the Company’s common stock and the valuation of derivative financial instruments, the amortization of deferred financing costs, the amortization and recoverability of capitalized patent costs and useful lives of long-lived assets, and income tax expense, some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. Although the Company believes that its estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made. Actual results could differ from those estimates.

#### ***Cash and Cash Equivalents***

The Company maintains cash in bank accounts, which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and periodically evaluates the credit worthiness of the financial institutions and has determined the credit exposure to be negligible.

#### ***Property and Equipment***

Property and equipment are stated at cost net of accumulated depreciation, which is recorded using the straight line method at rates sufficient to charge the cost of depreciable assets to operations over their estimated useful lives, which range from 3 to 7 years. Maintenance and repairs are charged to operations as incurred.

### **Note 3 – Summary of Significant Accounting Policies, continued**

#### ***Trademarks***

Legal and filing fees incurred in connection with the registration of trademarks are capitalized.

#### ***Research and Development***

Research and development expenses are charged to operations as incurred. For internally developed patents, all costs incurred to the point when a patent application is to be filed are expensed as incurred as research and development expense. Patent application costs, generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain. The Company incurred research and development costs of \$17,103 during the period from October 31, 2012 (inception) through December 31, 2012, \$1,019,950 for the nine months ended September 30, 2013 and \$1,037,053 for the period October 30, 2012 (inception) through September 30, 2013.

#### ***Impairment of Long-lived Assets***

The Company reviews for the impairment of long-lived assets, including trademarks, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An impairment loss would be recognized when estimated future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. The Company has not identified any such impairment losses.

### **Note 3 – Summary of Significant Accounting Policies, continued**

#### ***Income Taxes***

The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of items that have been included or excluded in the financial statements or tax returns. Deferred tax assets and liabilities are determined on the basis of the difference between the tax basis of assets and liabilities and their respective financial reporting amounts (“temporary differences”) at enacted tax rates in effect for the years in which the temporary differences are expected to reverse.

For the period October 30, 2012 (inception) through December 31, 2012, the Company had approximately \$17,000 of research and development expenses capitalized for federal income tax purposes, with amortization commencing upon the Company receiving an economic benefit from the related research and \$4,000 of organization costs capitalized, to be amortized for federal income tax purposes over 15 years. Accordingly, as of December 31, 2012, the Company has approximately \$0 gross federal and state net operating loss carryovers (“NOLs”). For the period October 30, 2012 (inception) through December 31, 2012, the deferred tax assets in connection with the research and development costs and the organizational costs were fully reserved, and the Company’s effective tax rate was 0%.

In its interim financial statements the Company follows the guidance in ASC 270 “Interim Reporting” and utilized the expected annual effective tax rate in determining its income tax provision for the interim period.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the future generation of taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and taxing strategies in making this assessment. Based on this assessment, management has established a full valuation allowance against all of the net deferred tax assets for each period, since it is more likely than not that all of the deferred tax assets will not be realized.

Tax benefits are recognized only for tax positions that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for “unrecognized tax benefits” is recorded for any tax benefits claimed in the Company’s tax returns that do not meet these recognition and measurement standards. As of December 31, 2012, no liability for unrecognized tax benefits was required to be reported. The guidance also discusses the classification of related interest and penalties on income taxes. The Company’s policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties was recorded during the period ended December 31, 2012.

**Note 3 – Summary of Significant Accounting Policies, continued****Net Loss Per Common Share**

Basic net loss per share is computed by dividing net loss available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share are computed using the weighted average number of common shares and, if dilutive, potential common shares outstanding during the period. Potential common shares consist of the incremental common shares issuable upon the exercise of the conversion of the Company's convertible notes and warrants (using the if-converted method). The computation of basic loss per share for the period ended October 30, 2012 (inception) through December 31, 2012 and for the nine months ended September 30, 2013, excludes potentially dilutive securities of 0 and 12,808,401, respectively, because their inclusion would be antidilutive. As a result, the computations of net loss per share for each period presented is the same for both basic and fully diluted.

Potentially dilutive securities outlined in the table below have been excluded from the computation of diluted net loss per share, because the effect of their inclusion would have been anti-dilutive.

	For the Period Ending October 30, 2012 (Inception) Through December 31, 2012	For the Nine Months Ended September 30, 2013
Convertible Notes – principal	-	10,576,923
Convertible Notes – accrued interest	-	239,937
Consulting Warrant to purchase common stock	-	1,110,131
Financing Warrant to purchase common stock	-	881,410
Total potentially dilutive securities	-	12,808,401

**Note 3 – Summary of Significant Accounting Policies, continued****Fair Value Measurements**

The carrying amounts of cash and cash equivalents, accounts payable and accrued expenses and other current liabilities, approximate fair value due to the short-term nature of these instruments.

Fair value is defined as an exit price, representing the amount that would be received upon the sale of an asset or payment to transfer a liability in an orderly transaction between market participants. Fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or liability. A three-tier fair value hierarchy is used to prioritize the inputs in measuring fair value as follows:

- Level 1. Quoted prices in active markets for identical assets or liabilities.
- Level 2. Quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable, either directly or indirectly.
- Level 3. Significant unobservable inputs that cannot be corroborated by market data.

The assets or liability's fair value measurement within the fair value hierarchy is based upon the lowest level of any input that is significant to the fair value measurement. The following table provides a summary of the assets that are measured at fair value on a recurring basis.

	Total	Quoted Prices in Active Markets for Identical Assets or Liabilities (Level 1)	Quoted Prices for Similar Assets or Liabilities in Active Markets (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Derivative Liabilities:</b>				
December 31, 2012	\$ -	\$ -	\$ -	\$ -
<b>September 30, 2013:</b>				
Conversion Feature	\$ 5,482,000	\$ -	\$ -	\$ 5,482,000
Financing Warrant	189,500	-	-	189,500
Consulting Warrant	540,000	-	-	540,000
<b>Total</b>	<u>\$ 6,211,500</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 6,211,500</u>

### Note 3 – Summary of Significant Accounting Policies, continued

#### Fair Value Measurements, continued

The following table sets forth a summary of the changes in the fair value of the Company's Level 3 financial liabilities that are measured at fair value on a recurring basis:

	For the Period Ended October 30, 2012 (Inception) Through December 31, 2012	For the Nine Months Ended September 30, 2013
Beginning balance	\$ -	\$ -
Aggregate fair value of conversion feature and warrants upon issuance	-	6,100,000
Change in fair value of conversion feature and warrants	-	111,500
Ending balance	<u>\$ -</u>	<u>\$ 6,211,500</u>

The conversion feature of the Convertible Notes was measured at fair value using a Monte Carlo simulation and is classified within Level 3 of the valuation hierarchy. The warrant liabilities for the Financing Warrant and the Consulting Warrant were measured at fair value using a Monte Carlo simulation and are classified within Level 3 of the valuation hierarchy. The significant assumptions and valuation methods that the Company used to determine fair value and the change in fair value of the Company's derivative financial instruments are discussed in Note 7 – Private Placement.

Level 3 liabilities are valued using unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the derivative liabilities. For fair value measurements categorized within Level 3 of the fair value hierarchy, the Company's Chief Financial Officer determined its valuation policies and procedures. The development and determination of the unobservable inputs for Level 3 fair value measurements and fair value calculations are the responsibility of the Company's Chief Financial Officer with support from the Company's consultants and which are approved by the Chief Financial Officer.

Level 3 financial liabilities consist of the derivative liabilities for which there is no current market for these securities such that the determination of fair value requires significant judgment or estimation. Changes in fair value measurements categorized within Level 3 of the fair value hierarchy are analyzed each period based on changes in estimates or assumptions and recorded as appropriate.

The Company uses a Monte Carlo model to value Level 3 financial liabilities at inception and on subsequent valuation dates. This simulation incorporates transaction details such as the Company's stock price, contractual terms, maturity, risk free rates, as well as, volatility. The Company also used a binomial simulation and Black-Scholes economic model as supplemental valuation tools in order to validate the reasonableness of the results of the Monte Carlo simulation when measuring the Financing Warrant and the Consulting Warrant.



**Note 3 – Summary of Significant Accounting Policies, continued**

***Fair Value Measurements, continued***

A significant decrease in the volatility or a significant decrease in the Company's stock price, in isolation, would result in a significantly lower fair value measurement. Changes in the values of the derivative liabilities are recorded in Change in Fair Value of Derivative Liabilities within Other Expense (Income) on the Company's Statements of Operations.

As of December 31, 2012 and September 30, 2013, there were no transfers in or out of level 3 from other levels in the fair value hierarchy.

In accordance with the provisions of ASC 815, the Company presented the conversion feature and warrant liabilities at fair value on its balance sheet, with the corresponding changes in fair value recorded in the Company's statement of operations for the applicable reporting periods.

The fair value of the Company's common stock was determined by a third party valuation consultant, and was derived from the valuation of the Company using a methodology which back-solved to the fair value of the common stock on May 16, 2013, based upon the Company's capitalization, existing dilutive securities and the proceeds received from the issuance of the Convertible Notes. For the purposes of this back-solve computation, management assumed that the Convertible Notes would convert at \$0.52 per share (the floor level), and that the Financing Warrant would have an exercise price of \$0.624 per common share or, 120% of the exercise price of the Convertible Notes.

Management determined that the results of its valuations are reasonable.

### **Note 3 – Summary of Significant Accounting Policies, continued *Convertible Instruments***

The Company accounts for hybrid contracts that feature conversion options in accordance with ASC 815 “Derivatives and Hedging Activities,” (“ASC 815”) and ASC 480 “Distinguishing Liabilities from Equity” (“ASC 480”), which require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria includes circumstances in which (i) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (ii) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (iii) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. The Company accounts for convertible instruments which have been determined to be free standing derivative financial instruments (when the Company has determined that the embedded conversion options should be bifurcated from their host instruments) in accordance with ASC 815. Under ASC 815, a portion of the proceeds received upon the issuance of the hybrid contract are allocated to the fair value of the derivative. The derivative is subsequently marked to market at each reporting date based on current fair value, with the changes in fair value reported in results of operations.

Conversion options that contain variable settlement features such as provisions to adjust the conversion price upon subsequent issuances of equity or equity linked securities at exercise prices more favorable than that featured in the hybrid contract generally result in their bifurcation from the host instrument.

The Company accounts for convertible debt instruments, when the Company has determined that the embedded conversion options should not be bifurcated from their host instruments, in accordance with ASC 470-20 “Debt with Conversion and Other Options”. The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. Debt discounts under these arrangements are amortized over the term of the related debt.

**Note 3 – Summary of Significant Accounting Policies, continued Common Stock Purchase Warrants and Other**

**Derivative Financial Instruments**

The Company classifies as equity any contracts that (i) require physical settlement or net-share settlement or (ii) provides a choice of net-cash settlement or settlement in the Company's own shares (physical settlement or net-share settlement) providing that such contracts are indexed to the Company's own stock as defined in ASC 815-40 "Contracts in Entity's Own Equity" ("ASC 815-40"). The Company classifies as assets or liabilities any contracts that (i) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the Company's control) or (ii) gives the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement). The Company assesses classification of common stock purchase warrants and other free standing derivatives at each reporting date to determine whether a change in classification between assets and liabilities or equity is required.

**Management's Evaluation of Subsequent Events**

The Company evaluates events that have occurred after the balance sheet date but before the financial statements are issued (See Note 11 - Subsequent Events).

**Note 4 – Property and Equipment**

Property and equipment are as follows:

	As of December 31, 2012	As of September 30, 2013
Computer software	\$ -	\$ 4,150
Computer hardware	-	1,695
Furniture and fixtures	-	10,656
Total	-	16,501
Less – Accumulated depreciation	-	(880)
Total property and equipment, net	\$ -	\$ 15,621

Total depreciation expense of the Company's property and equipment for the period ended October 30, 2012 (inception) through December 31, 2012, for the nine months ended September 30, 2013 and for the period October 30, 2012 (inception) through September 30, 2013, was \$0, \$880 and \$880, respectively.

**Note 5 – Intangible Assets, continued**

Intangible assets as of September 30, 2013 are as follows:

	Cost	Accumulated amortization	Net
Trademark	<u>\$ 4,725</u>	<u>\$ -</u>	<u>\$ 4,725</u>

There were no intangible assets as of December 31, 2012.

Amortization expense for intangible assets was \$0 for the period ended October 30, 2012 (inception) through December 31, 2012, for the nine months ended September 30, 2013 and for the period ended October 30, 2012 (inception) through September 30, 2013, as the Company's trademark is a non-amortizing asset.

**Note 6 – Accrued Expenses and Other Current Liabilities**

Accrued expenses consist of the following at December 31, 2012 and September 30, 2013:

	As of December 31, 2012	As of September 30, 2013
Accrued interest payable	\$ -	\$ 124,767
Accrued compensation	-	11,244
Other accrued expenses	10,406	31,150
Total	<u>\$ 10,406</u>	<u>\$ 167,161</u>

**Note 7 – Private Placement****Senior Secured Convertible Notes**

On May 16, 2013, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with accredited investors (the "Investors"), pursuant to which the Company sold an aggregate of (i) \$5,500,009 principal amount of senior secured convertible notes (the "Convertible Notes"). In connection with the sale of the Convertible Notes (the "Bridge Financing"), the Company entered into a registration rights agreement (the "Registration Rights Agreement") and a security agreement (the "Security Agreement") with the Investors. The closing of the Bridge Financing was completed on May 16, 2013. The Convertible Notes bear interest at 6% per annum and mature on August 16, 2014.

## Note 7 – Private Placement, continued

### Senior Secured Convertible Notes, continued

The principal and interest of the Convertible Notes are convertible into the Company's common stock at a conversion price between \$0.52 and \$1.04 per share depending on the facts and circumstances at the time of the conversion (see below). Upon issuance, the Convertible Notes bear simple interest at 6% per annum, and upon the occurrence of any specified event of default, the Convertible Notes would bear interest at 12% per annum. The Convertible Notes may be prepaid or converted into Common Stock with consent of the holder or the holders of a majority of the principal then outstanding under all the Convertible Notes (the "Required Holders") and upon certain events constituting a change in control of the Company. The Convertible Notes are required to be converted upon a qualifying initial public offering ("IPO"), if any, in which case the conversion price is to be equal to 50% of the price to the public in such offering (but not more than \$1.04 or less than \$0.52 per share). A Convertible Note may also be converted in certain circumstances at the election of the holder of the Convertible Note in connection with a financing that is not an initial public offering, in which case the conversion price is to be equal to 50% of the price paid by the investors in such financing (but not more than \$1.04 or less than \$0.52 per share). In the event of an optional conversion by the holder of a Convertible Note during a continuing event of default, the conversion price would be \$0.52; otherwise the optional conversion price would be \$1.04. The conversion price under the Convertible Notes is further subject to adjustment in the event of stock splits, combinations or the like and upon certain other events, all as provided in the Convertible Notes.

The aggregate amount of accrued interest on the Convertible Notes was \$0 and \$124,767 as of December 31, 2012 and September 30, 2013, respectively. As of September 30, 2013, the principal and accrued interest on the Convertible Notes were convertible into 10,576,923 and 239,937 shares of the Company's common stock, respectively, assuming a conversion price of \$0.52 per share.

### Accounting for the Senior Secured Convertible Notes

Pursuant to the terms of the Convertible Notes, the conversion price is subject to adjustment in the event of an IPO, other financing and upon certain other events. The embedded conversion feature was not clearly and closely related to the host instrument and was bifurcated from the host Convertible Notes as a derivative, principally because the instrument's variable exercise price terms would not qualify as being indexed to the Company's own common stock. Accordingly, this conversion feature instrument has been classified as a derivative liability in the accompanying balance sheet as of September 30, 2013.

Derivative liabilities are initially recorded at fair value and are then re-valued at each reporting date, with changes in fair value recognized in earnings during the reporting period.

The Company determined that the initial fair value of the embedded conversion option was \$5,376,000. From the gross proceeds upon the issuance of the Convertible Notes of \$5,500,009, the Company deducted in full the fair value of the embedded conversion feature of \$5,376,000 as a debt discount, as shown below. The debt discount is being amortized under the effective interest method over the term of the Convertible Notes.

Face value of the Convertible Notes	\$	5,500,009
Discount-fair value of embedded conversion feature		(5,376,000)
Proceeds attributable to the Convertible Notes	\$	<u>124,009</u>

## Note 7 – Private Placement, continued

### Accounting for the Senior Secured Convertible Notes, continued

The Company calculated the fair value of the embedded conversion feature of the Convertible Notes using a Monte Carlo simulation, with the observable assumptions as provided in the table below. The significant unobservable inputs used in the fair value measurement of the reporting entity's embedded conversion feature are expected stock prices, levels of trading and liquidity of the Company stock. Significant increases in the expected stock prices and expected liquidity would result in a significantly higher fair value measurement. Significant increases in either the probability or severity of default of the host instrument would result in a significantly lower fair value measurement.

	As of	
	May 16, 2013	September 30, 2013
Stock price on valuation date	\$ 0.42	\$ 0.42
Conversion price	0.52	0.52
Term (years)	1.25	.88
Expected volatility	60%	60%
Dividend yield	0%	0%
Weighted average risk-free interest rate	0.79%	1.39%
Trials	20,000	20,000
Aggregate fair value	\$ 5,376,000	\$ 5,482,000

The amortization of debt discount related to the Convertible Notes was \$0, \$262,506 and \$262,506, respectively, for the period ended October 30, 2012 (inception) through December 31, 2012, for the nine months ended September 30, 2013 and for the period October 30, 2012 (inception) through September 30, 2013. As of September 30, 2013, the debt discount will be amortized over a remaining period of 0.9 years. The derivative liability related to the embedded conversion feature is revalued at each reporting period. During the nine months ended September 30, 2013 and for the period ended October 30, 2012 (inception) through September 30, 2013, the Company recorded an increase of \$106,000 in the fair value of the derivative liability for the conversion feature of the Convertible Notes, which was recorded as a change in the fair value of derivative liabilities within the statement of operations.

### Placement Agent Agreement

On January 23, 2013, the Company entered into an agreement (the "Placement Agent Agreement") with MDB Capital Group, Inc. ("MDB"), pursuant to which the Company appointed MDB to act as the Company's placement agent in connection with the sale of the Company's securities ("Offering or Offerings"). Specifically, MDB was the placement agent in connection with the sale of its Convertible Notes. The Placement Agent Agreement had an initial term of 180 days, and was renewed automatically upon the expiration of its initial term, after which it will continue in effect until it is terminated by either party with 60 days written notice to the other party.

In connection with the sale of the Convertible Notes, the Company paid MDB a cash fee of \$538,393 and sold to MDB for \$1,000 in cash, issued on May 16, 2013 a warrant (the "Financing Warrant") to purchase shares of the Company's common stock. The Financing Warrant was fully vested upon issuance, has a term of five years and may not be exercised until six months after the consummation of this offering, which is a qualifying firm commitment underwritten initial public offering. Pursuant to the terms of the Financing Warrant, the aggregate exercise price is fixed at \$550,000, with the per share exercise price determined based upon 120% of the conversion price of the Convertible Notes upon the consummation of the IPO, or upon other events under which the Convertible Notes may convert. As of September 30, 2013, the Financing Warrant is exercisable into 881,410 shares of the Company's common stock, respectively, assuming an exercise price of \$0.624 per share (or 120% of the Convertible Notes conversion price of \$0.52 per share)

## **Note 7 – Private Placement, continued**

### ***Placement Agent Agreement, continued***

In addition, in the event of a non-liquid exit transaction, as defined in the Financing Warrant agreement, the holder of the Financing Warrant may put the Financing Warrant back to the Company for a cash settlement at a fair value amount to be determined by appraisal and agreed to by both parties.

MDB shall have certain registration rights with respect to the common stock issued upon exercise of the Financing Warrant, including a one-time demand registration right with respect to such common stock.

### ***Consulting Agreement***

On January 23, 2013, the Company entered into a consulting agreement with MDB (the “Consulting Agreement”), pursuant to which MDB agreed to provide financial, strategic and intellectual property advisory services. The Consulting Agreement had an initial term of 180 days, and was renewed automatically upon the expiration of its initial term, after which it will continue in effect until it is terminated by either party with 30 days written notice to the other party.

As consideration for services provided under the Consulting Agreement prior to May 16, 2013, the Company sold to MDB for \$1,500 in cash, a warrant (the “Consulting Warrant”) for the purchase of an aggregate of 1,110,131 shares of the Company’s common stock.

The Consulting Warrant was fully vested upon issuance, has a term of five years, an exercise price of \$0.01 per share and may not be exercised until six months after the consummation of this offering, which is a qualifying firm commitment underwritten initial public offering. The Consulting Warrant may be exercised on a cashless basis. In addition, in the event of a non-liquid exit transaction, as defined in the Consulting Warrant, the holder of the Consulting Warrant may put the Consulting Warrant back to the Company for a cash settlement at a fair value amount to be determined by appraisal and agreed to by both parties.

MDB shall have certain registration rights with respect to the common stock issued upon exercise of the Consulting Warrant, including a one-time demand registration right with respect to such common stock.

### ***Accounting for the Financing Warrant and the Consulting Warrant***

The Company determined, based upon authoritative guidance, that both the Financing Warrant and the Consulting Warrant qualified as derivative instruments. Accordingly, these instruments have been classified as derivative liabilities in the accompanying balance sheet as of September 30, 2013.

Derivative liabilities are initially recorded at fair value and are then re-valued at each reporting date, with changes in fair value recognized in earnings during the reporting period.

The Company calculated the fair value of the Financing Warrant and the Consulting Warrant using a Monte Carlo simulation, with the observable assumptions as provided in the table below. The significant unobservable inputs used in the fair value measurement of the reporting entity’s Financing Warrant and the Consulting Warrant are expected stock prices, levels of trading and liquidity of the Company’s common stock. Significant increases in the expected stock prices and expected liquidity would result in a significantly higher fair value measurement. Significant increases in either the probability or severity of default of the host instrument would result in a significantly lower fair value measurement.

## Note 7 – Private Placement, continued

### Accounting for the Financing Warrant and the Consulting Warrant, continued

Provided below are the principal assumptions used in the measurement of the fair values of the Financing Warrant and the Consulting Warrant as of May 16, 2013 and September 30, 2013.

	As of May 16, 2012		As of September 30, 2013	
	Financing Warrant	Consulting Warrant	Financing Warrant	Consulting Warrant
Stock price on valuation date	\$ 0.42	\$ 0.42	\$ 0.42	\$ 0.42
Exercise price	\$ 0.624	\$ 0.01	\$ 0.624	\$ 0.01
Term (years)	5.00	5.00	4.63	4.63
Expected volatility	60%	60%	60%	60%
Dividend yield	0%	0%	0%	0%
Weighted average risk-free interest rate	0.79%	1.39%	0.79%	1.39%
Number of warrants	881,410	1,110,131	881,410	1,110,131
Number of trials	20,000	20,000	20,000	20,000
Aggregate fair value	\$ 186,500	\$ 537,500	\$ 189,500	\$ 540,000

The initial fair value of the Financing Warrant was \$186,500 and was accounted for as derivative issuance expense and along with the other derivative issuance expenses (see below), was expensed upon the issuance of the Convertible Notes. The initial fair value of the Consulting Warrant was \$537,500, and was expensed immediately as a consulting fee and was recorded within general and administrative expenses in the statement of operations for the nine months ended September 30, 2013. During the nine months ended September 30, 2013 and for the period October 30, 2012 (inception) through September 30, 2013, the Company recorded an increase of \$5,500 in the fair value of the derivative liability for the Financing Warrant and the Consulting Warrant, which was recorded as a change in the fair value of derivative liabilities within the statement of operations.

### Derivative Issuance Expenses

Derivative issuance expenses incurred in connection with the Private Placement are shown below and were expensed upon the issuance of the Convertible Notes, as substantially all the value was attributable to the derivative instruments.

	For the Nine Months Ended September 30, 2013
Fair value of Financing Warrant	\$ 186,500
Cash placement agent fee	538,393
Legal and other expenses	162,169
Total	<u>\$ 887,062</u>

### Patent Assignment

On May 16, 2013, the Company entered into a patent assignment and Security Agreement with the Investors, in order to grant a continuing security interest in the patents included as collateral pledged in connection with the Convertible Notes.



## **Note 8 – Commitments and Contingencies**

### ***Consulting Agreements***

On May 14, 2013, the Company entered into a consulting agreement with Cheryl Sanchez, the sister of one of the directors and shareholders of the Company, for Ms. Sanchez to provide finance, accounting and other advisory services (“Finance Consulting Agreement”). Ms. Sanchez was paid at a rate of \$21,550 per month. In connection with the execution of the Finance Consulting Agreement, Ms. Sanchez purchased for \$35,464 in cash, 354,640 shares of the Company’s common stock, under the Company’s 2013 Stock Plan (See Note 10 – Stock Based Compensation). The Company’s Board of Directors determined that the purchase price of \$0.10 per share represented the fair value of these shares upon issuance, and further concluded that no compensation was deemed to be awarded to Ms. Sanchez in connection with this share issuance. The Finance Consulting Agreement was terminated effective November 30, 2013. In connection with the termination of the Finance Consulting Agreement, the Company repurchased for \$29,553, 295,533 shares of restricted common stock from Ms. Sanchez.

## **Note 9 – Stockholders’ Deficiency**

### ***Authorized Capital***

Pursuant to the Company’s original certificate of incorporation, on October 30, 2012 (inception), the Company authorized 18,000,000 shares of common stock with a par value of \$0.00001 per share and 5,000,000 shares of preferred stock \$0.00001 par value per share, all of which was designated Series AA Preferred Stock.

On May 10, 2013, pursuant to an amendment of the Company’s certificate of incorporation, the Company increased to 40,000,000 the authorized number of shares of common stock, par value of \$0.00001 per share, and simultaneously, the Company eliminated the preferred stock (See Note 11 – Subsequent Events).

## **Note 9 – Stockholders’ Deficiency, continued**

### ***Authorized Capital, continued***

The holders of the Company’s common stock are entitled to one vote per share. Holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the board of directors out of legally available funds. Upon the liquidation, dissolution or winding up of the Company, holders of common stock are entitled to share ratably in all assets of the Company that are legally available for distribution.

### ***Series AA Preferred Stock***

During the period from October 30, 2012 (inception) through May 9, 2013, the Company was authorized to issue shares of its Series AA Preferred Stock. The Series AA Preferred Stock ranked senior to the Company’s common stock. The Series AA Preferred Stock was subordinate and ranked junior to all indebtedness of the Company. No shares of the Series AA Preferred Stock were ever issued.

### ***Common Stock Issued***

On November 8, 2012, the Company sold 7,680,000 shares of its common stock at a price of approximately \$.0013 per share and representing aggregate proceeds of \$10,000 to DvineWave Holdings LLC , an entity formed by the parents of Michael Leabman, the Company’s founder and its Chief Technology Officer, to make an investment in the Company.

On January 28, 2013, Company sold 320,000 shares of its common stock to Mr. Michael Leabman the Company’s founder and prior to October 30, 2013, also its President, at a price of approximately \$.0013 per share for aggregate proceeds of \$417.

On March 4, 2013, the Company sold 2,666,666 shares of its common stock at a price of \$0.06 per share to Absolute Ventures LLC, an affiliate of Mr. Greg Brewer, one of the Company’s directors for aggregate proceeds of \$160,000.

On May 7, 2013, the Company sold 80,000 shares of its common stock at a price of \$0.06 per share to MS Investments, an affiliate of one of the company’s legal firms, Much Shelist, P.C. for aggregate proceeds of \$4,800.

## **Note 10 – Stock Based Compensation**

### ***Adoption of 2013 Stock Plan***

Effective as of May, 9, 2013, the Board adopted the 2013 Stock Plan of DvineWave, Inc. (the “2013 Stock Plan”). The 2013 Stock Plan is administered by the Board, and provides for the issuance of incentive and non-incentive stock options, stock purchase rights and restricted stock units, for the purchase of up to a total of 4,217,352 shares of the Company’s common stock to the Company’s employees and consultants (as determined by the Board). The Board, or a committee of the Board, has the authority to determine the amount, type and terms of each award. Pursuant to the 2013 Stock Plan, each option grant must have an exercise price at or above the fair market value of the Company’s common stock on the date of grant in the case of a non-statutory stock option, or until the Company’s securities are listed on a recognized exchange, at 85% of fair value (as determined) under the 2013 Stock Plan of DvineWave, Inc. (See Note 8 – Commitments and Contingencies).

## **Note 11 – Subsequent Events**

### ***Operating Lease***

On October 4, 2013, the Company executed an eight month lease for 3,562 square feet of office space in Pleasanton California from an affiliate of Greg Brewer, one of the Company's directors. The base rent is \$6,055 per month plus an additional security deposit of \$6,055. The Company has the right to terminate the lease upon 30 days written notice.

### ***Employment Agreements***

The following is a summary of the employment arrangements with our executive officers as currently in effect.

#### ***Stephen Rizzone***

The Company entered into an employment agreement with Stephen Rizzone, the Company's President, Chief Executive Officer and chairman of the board of directors, effective October 1, 2013. The employment agreement has no specific term and constitutes at-will employment. Mr. Rizzone's current annual base salary is \$150,000, although his annual base salary will increase to \$300,000 immediately following our initial public offering, and he is eligible for up to five annual cash bonuses of up to \$30,000 each (one each with respect to our fiscal quarters and one with respect to our fiscal year) based upon achievement of performance-based objectives established by our board of directors. Pursuant to Mr. Rizzone's employment agreement, he was granted a ten year option to purchase 1,100,000 shares of common stock on December 12, 2013 under our 2013 Equity Incentive Plan that vests over four years in 48 equal monthly installments. Mr. Rizzone's employment agreement provides that upon the consummation of our initial public offering he will receive an additional option award so that together with Mr. Rizzone's December 2013 option award the two option awards combined represent six percent (6%) of the Company's outstanding shares on a fully-diluted basis. The second option award, if issued, will vest over the same vesting schedule as Mr. Rizzone's December, 2013 option award.

If Mr. Rizzone's employment is terminated due to his death or disability, by the Company without cause or if Mr. Rizzone resigns for good reason, Mr. Rizzone will be entitled to receive (i) one year of his base salary at the rate then in effect, (ii) five performance bonuses (each equal to the average of the performance bonus paid with respect to the two fiscal quarters, or the fiscal quarter-end and fiscal year-end, as applicable, immediately preceding Mr. Rizzone's termination or resignation) (iii) reimbursement of Mr. Rizzone's cost of COBRA coverage for one year, and (iv) twenty-five percent (25%) of the options to purchase shares of common stock subject to Mr. Rizzone's option awards described above will vest immediately and become exercisable, and, along with any previously vested and unexercised options, may be exercised by Mr. Rizzone within one year following his termination or resignation. However, if a Liquidation Event (as defined below) shall occur within one year of Mr. Rizzone's termination without cause or his resignation for good reason, all of Mr. Rizzone's option awards described above will vest immediately and become exercisable.

## **Note 11 – Subsequent Events, continued**

### ***Stephen Rizzone, continued***

Mr. Rizzone's employment agreement provides that if the Company experiences a Liquidation Event (as defined below), Mr. Rizzone's employment with the Company will be terminated and the Company will enter into a consulting agreement with Mr. Rizzone that entitles him to the following during its term: (i) continued payment of Mr. Rizzone's base salary at the rate then in effect, (ii) continued payment of Mr. Rizzone's performance bonuses described above, and (iii) continued payment of benefits that are substantially similar to those of the Company's other senior executive officers, and (iv) continuation of the vesting period of the option awards described above. The term of the consulting agreement between the Company and Mr. Rizzone shall expire on the later of two years from the date of the Liquidation event or October 1, 2017. For purposes of Mr. Rizzone's employment agreement, a Liquidation Event means a merger, acquisition, consolidation or other transaction (other than an equity financing) following which our stockholders prior to such transaction hold less than fifty percent (50%) of our outstanding voting securities of the acquiring or surviving entity, or a sale, license or transfer of all or substantially all of our assets.

If Mr. Rizzone resigns without good reason, he will be entitled to his base salary at the rate then in effect up to and through the effective date of his resignation, along with any unreimbursed reasonable, out-of-pocket business expenses incurred by Mr. Rizzone in the performance of his duties.

Mr. Rizzone is also eligible to receive benefits that are substantially similar to those of the Company's other senior executive officers. Mr. Rizzone is subject to certain restrictive covenants, including non-solicitation of employees, consultants and customers and non-competition each for a period one year following termination of his employment with the Company.

### ***Grant of Stock Options***

In December 2013, Mr. Rizzone was granted an option under the 2013 Equity Incentive Plan to purchase 1,100,000 shares of the Company's common stock, at a price of \$0.42 per share, with a term of ten years and which vests 1/48 for each completed month of service.

## Note 11 – Subsequent Events, continued

### *Michael Leabman*

We entered into an employment agreement with Michael Leabman, the Company's Chief Technology Officer, effective October 1, 2013. The employment agreement has no specific term and constitutes at-will employment. Mr. Leabman's current annual base salary is \$250,000, and he is eligible for an annual performance based bonus award of up to twenty percent (20%) of his base salary based upon achievement of performance-based objectives established by our Chief Executive Officer and board of directors. Pursuant to Mr. Leabman's employment agreement, he is entitled to a ten year option to purchase 230,000 shares of common stock under our 2013 Equity Incentive Plan that vests over four years in 48 equal monthly installments. Mr. Leabman's employment agreement provides that upon the consummation of our initial public offering, if Mr. Leabman's option award plus any Company securities he currently owns represent less than three percent (3%) of the Company's outstanding shares on a fully-diluted basis, he shall be entitled to a second option award which will entitle him to purchase that number of shares of our common stock such that the two option awards combined plus any Company securities he currently owns represent three percent (3%) of the Company's outstanding shares on a fully-diluted basis. The second option award, if issued, will vest over the same vesting schedule as Mr. Leabman's initial option award.

If Mr. Leabman's employment is terminated due to his death or disability, by the Company without cause or if Mr. Leabman resigns for good reason, Mr. Leabman will be entitled to receive (i) one year of his base salary at the rate then in effect, (ii) a performance bonuses each equal to the total performance bonuses paid to Mr. Leabman in the calendar year immediately preceding Mr. Leabman's termination or resignation (iii) reimbursement of Mr. Leabman's cost of COBRA coverage for one year, and (iv) twenty-five percent (25%) of the options to purchase shares of common stock subject to Mr. Leabman's option awards described above will vest immediately and become exercisable, and, along with any previously vested and unexercised options, may be exercised by Mr. Leabman within one year following his termination or resignation. However, if a Liquidation Event (as defined below) shall occur within one year of Mr. Leabman's termination without cause or his resignation for good reason, all of Mr. Leabman's options to purchase shares of common stock pursuant to the option awards described above will vest immediately and become exercisable.

In addition to those benefits described above, if Mr. Leabman's employment is terminated by the Company without cause or he resigns for Good Reason within 18 months of a Liquidation Event (as defined below), all of Mr. Leabman's options to purchase shares of common stock pursuant to the option awards described above will vest immediately and become exercisable. For purposes of Mr. Leabman's employment agreement, a Liquidation Event has the same meaning as in Mr. Rizzone's employment agreement.

If Mr. Leabman resigns without good reason, he will be entitled to his base salary at the rate then in effect up to and through the effective date of his resignation, along with any unreimbursed reasonable, out-of-pocket business expenses incurred by Mr. Leabman in the performance of his duties.

Mr. Leabman is also eligible to receive benefits that are substantially similar to those of the Company's other senior executive officers. Mr. Leabman is subject to certain restrictive covenants, including non-solicitation of employees, consultants and customers and non-competition each for a period one year following termination of his employment with the Company.

## **Note 11 – Subsequent Events, continued**

### ***Michael Leabman, continued***

Additionally, if Mr. Leabman's employment is terminated due to his death or disability, twenty-five percent (25%) of the options to purchase shares of common stock subject to Mr. Leabman's option awards described above will vest immediately and become exercisable, and, along with any previously vested and unexercised options, may be exercised within a period of one year following such termination. If Mr. Leabman's employment is terminated due to his death or disability and, prior to the one-year anniversary of his termination, the Company experiences a liquidation event, all of Mr. Leabman's options to purchase shares of common stock pursuant to the option award described above will vest immediately and become exercisable.

If Mr. Leabman resigns without good reason, he will be entitled to his base salary at the rate then in effect up to and through the effective date of his resignation, along with any unreimbursed reasonable, out-of-pocket business expenses incurred by Mr. Leabman in the performance of his duties.

Mr. Leabman is also eligible to receive benefits that are substantially similar to those of the Company's other senior executive officers. Mr. Leabman is subject to certain restrictive covenants, including non-solicitation of employees, consultants and customers and non-competition each for a period one year following termination of his employment with the Company.

### ***Reverse Stock Split***

In December 2013 the Company's board of directors and stockholders holding a majority of outstanding voting power, approved resolutions authorizing the Company's board of directors to effect a reverse split of the Company's common stock at an exchange ratio of between one-for-two and one-for-ten, with the board of directors retaining the discretion as to whether to implement the reverse split and which exchange ratio to implement.

### ***Equity Incentive Plan***

In December 2013 the Company's board and stockholders approved the 2013 Equity Incentive Plan, providing for the issuance of equity based instruments aggregating an initial total of 4,158,245 shares which replaces the 2013 Stock Plan.

**4,000,000 Shares of Common Stock**

DvineWave Inc.

**PROSPECTUS**

**MDB Capital Group, LLC**

Until \_\_\_\_\_, 2013, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the various expenses to be incurred in connection with the sale and distribution of our common stock being registered hereby, all of which will be borne by us (except any underwriting discounts and commissions and expenses incurred for brokerage, accounting, tax or legal services or any other expenses incurred in disposing of the shares). All amounts shown are estimates except the SEC registration fee.

SEC Filing Fee	\$	3,318
FINRA Fee*	\$	50,000
Underwriter's Legal Fees and Expenses.	\$	175,000
Nasdaq Fee*	\$	50,000
Printing Expenses*	\$	10,000
Accounting Fees and Expenses*	\$	100,000
Legal Fees and Expenses*	\$	250,000
Transfer Agent and Registrar Expenses*	\$	10,000
Miscellaneous*	\$	101,682
Total	\$	750,000

#### ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The following summary is qualified in its entirety by reference to the complete text of any statutes referred to below and the certificate of incorporation of DvineWave Inc., a Delaware corporation.

Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

In the case of an action by or in the right of the corporation, Section 145 of the DGCL permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court shall deem proper.



Section 145 of the DGCL also permits a Delaware corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145 of the DGCL.

Article IX of our Amended and Restated Certificate of Incorporation states that our directors shall not be personally liable to us or to our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to us or to our stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Article X of our Amended and Restated Certificate of Incorporation authorizes us, to the fullest extent permitted by applicable law, to provide indemnification of (and advancement of expenses to) our directors, officers, employees and agents (and any other persons to which the Delaware General Corporation Law permits us to provide indemnification) through bylaw provisions, agreements with such directors, officers, employees, agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by the Delaware General Corporation Law, with respect to actions for breach of duty to this corporation, its stockholders, and others.

Article VI of our Bylaws provides that we shall, to the maximum extent and in the manner permitted by the Delaware General Corporation Law, indemnify each of our directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Company. The right to indemnification conferred by Article VI is a contract right and includes the right to be paid by us the expenses incurred in defending any action or proceeding for which indemnification is required or permitted following authorization thereof by the Board of Directors shall be paid in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnified party is not entitled to be indemnified as authorized in Article VI. We may maintain insurance, at our expense, to protect the Company and any of our directors, officers, employees or agents against any such expense, liability or loss, whether or not we have the power to indemnify such person.

#### **ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES**

During the past three years, we issued the following securities without registration under the Securities Act of 1933, as amended (the "Securities Act").

##### ***Stock, Warrants and Convertible Subordinated Notes***

On May 14, 2013, we sold 354,640 shares of common stock to a former consultant of the Company for proceeds of \$35,464. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investor was accredited and there was no form of general solicitation or general advertising relating to the offer. On December 12, 2013, pursuant the restricted stock purchase agreement between the Company and the consultant, the Company repurchased 295,533 shares of common stock from the consultant at the original purchase price per share paid by the consultant.

On May 7, 2013, we sold 80,000 shares of common stock to MS Investments, LLC for proceeds of \$4,800. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investor was accredited and there was no form of general solicitation or general advertising relating to the offer.

On March 1, 2013, we sold 2,666,666 shares of common stock to Absolute Ventures LLC for proceeds of \$160,000. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investor was accredited and there was no form of general solicitation or general advertising relating to the offer.

On November 8, 2012, we sold 7,680,000 shares of common stock to DvineWave Holdings LLC, an entity formed by the parents of Michael Leabman, our Chief Technology Officer, to make an investment in the Company, for proceeds of \$10,000. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investor was accredited and there was no form of general solicitation or general advertising relating to the offer.

On January 28, 2013, we sold 320,000 shares of common stock to Michael Leabman, our Chief Technology Officer, for proceeds of \$417. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investor was accredited and there was no form of general solicitation or general advertising relating to the offer.

On May 16, 2013, we completed an offering of \$5.5 million in principal amount of our senior secured convertible promissory notes. The notes bear simple interest at 6%, and upon and during the occurrence of any specified event of default, the notes bear interest at 12%. The notes may be prepaid or converted into common stock with consent of the holder or the holders of a majority of the principal then outstanding under all the notes and upon certain events constituting a change in control of the Company. If we proceed with an initial public offering of our securities, as defined in the Securities Purchase Agreement, then there will be a mandatory conversion of the notes at a conversion price equal to a 50% discount to the per share initial public offering price (but not less than \$0.52 or more than \$1.04 per share). A note may also be converted in certain circumstances at the election of the holder of the note connection with a financing that is not an initial public offering, in which case the conversion price is to be equal to 50% of the price paid by the investors in such financing (but not less than \$0.52 or more than \$1.04 per share). In the event of an optional conversion by the holder of a Note during a continuing event of default, the conversion price would be \$0.52; otherwise the optional conversion price would be \$1.04. We relied on the exemption provided by Rule 506 of Regulation D of the Securities Act of 1933 to make the offerings inasmuch as all of the investors were accredited and there was no form of general solicitation or general advertising relating to the offers.

On May 16, 2013, we issued to MDB Capital Group, LLC a warrant, subsequently amended, to purchase shares of our common stock as consideration for its service as placement agent in connection with our May 16, 2013 offering of senior secured convertible promissory notes. This warrant has a term of five years, an aggregate exercise price fixed at \$550,000 and an initial per share exercise price of \$0.52; provided that the per share exercise price for which the warrant is exercisable will be adjusted upon consummation of a qualifying firm commitment underwritten initial public offering, if any, based on the actual conversion price of the notes in such initial public offering or shall be adjusted to 120% of the then in effect conversion price of the notes upon the occurrence of a merger, acquisition, sale or other disposition of substantially all assets, certain transactions involving the acquisition of voting control of the Company or certain stock splits or similar transactions not effected in connection with any initial public offering of the Company. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investors were accredited and there was no form of general solicitation or general advertising relating to the offer. This warrant was subsequently amended and restated on December 13, 2013, solely to provide that it may not be exercised, except in certain circumstances, until six months following the Company's initial public offering, to which this registration statement relates.

On May 16, 2013, we issued to MDB Capital Group, LLC, as consideration for consulting services rendered prior to the issuance date, a warrant to purchase 1,110,131 shares of our common stock. This warrant has a term of five years and a per share exercise price of \$0.01. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933 to make the offering inasmuch as the investors were accredited and there was no form of general solicitation or general advertising relating to the offer. This warrant was subsequently amended and restated on December 13, 2013, solely to provide that it may not be exercised, except in certain circumstances, until six months following the Company's initial public offering, to which this registration statement relates.

### ***Stock Options***

On December 12, 2013, we granted to Stephen Rizzone, our President and Chief Executive Officer, an option to purchase an aggregate of 1,100,000 shares of our common stock at an exercise price of \$0.42 per share. We received no consideration from these individuals in connection with the issuance of such options.

All of the stock options described above were granted under our 2013 Equity Incentive Plan to our officers, directors, employees and consultants in reliance upon an available exemption from the registration requirements of the Securities Act, including those contained in Rule 701 promulgated under Section 3(b) of the Securities Act. Among other things, we relied on the fact that, under Rule 701, companies that are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act are exempt from registration under the Securities Act with respect to certain offers and sales of securities pursuant to “compensatory benefit plans” as defined under that rule. We believe that our 2013 Equity Incentive Plan qualifies as a compensatory benefit plan.

## ITEM 16. EXHIBITS

<u>Exhibit No.</u>	<u>Description of Document</u>
1.1	Form of Underwriting Agreement**
3.1	Amended and Restated Certificate of Incorporation of DvineWave Inc. **
3.2	Bylaws of DvineWave Inc. **
4.1	Specimen Certificate representing shares of common stock of DvineWave Inc.**
4.2	Form of Underwriter's Warrant**
5.1	Opinion of K&L Gates LLP regarding the validity of the common stock being registered**
10.1	Engagement Agreement dated January 23, 2013 between the registrant and MDB Capital Group, LLC*
10.2	Engagement Agreement dated January 23, 2013 between the registrant and MDB Capital Group, LLC*
10.3	Form of Lock-Up Agreement*
10.4	Form of Securities Purchase Agreement between the registrant and investors for an offering completed on May 16, 2013*
10.5	Form of Registration Rights Agreement between the registrant and investors for an offering completed on May 16, 2013*
10.6	Form of Senior Secured Convertible Promissory Note issued by the registrant to investors in the offering completed on May 16, 2013*
10.7	Form of Security Agreement between the registrant and investors for the offering completed on May 16, 2013*
10.8	Executive Employment Agreement between the Company and Stephen R. Rizzone dated October 1, 2013 *
10.9	Executive Employment Agreement between the Company and Michael Leabman dated October 1, 2013 *
10.10	Form of Indemnification Agreement *
10.11	Form of Confidential Information and Invention Assignment Agreement *
10.12	Amended and Restated Warrant issued to MDB Capital Group, LLC (ARW-1) dated December 13, 2013*
10.13	Amended and Restated Warrant issued to MDB Capital Group, LLC (ARW-2) dated December 13, 2013*
10.14	Form of Lock-Up Agreement with MDB Capital Group, LLC**
10.15	Registration Rights Agreement between the registrant and MDB Capital Group, LLC dated May 16, 2013*
10.16	DvineWave Inc. 2013 Equity Incentive Plan*
10.17	Form of stock option award under 2013 Omnibus Equity Incentive Plan*
10.18	Standard Industrial/Commercial Multi-Tenant Lease between the registrant and ProSoft Engineering, Inc. dated October 4, 2013
14.1	Code of Ethics**
23.1	Consent of Marcum LLP, Independent Registered Public Accounting Firm*
23.2	Consent of K&L Gates LLP (included in Exhibit 5.1)**
24.1	Power of Attorney*

\*Filed herewith.

\*\*To be filed by amendment.

## ITEM 17. UNDERTAKINGS

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(5) To provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(6) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus as filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(7) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pleasanton, State of California, on this 16th day of December, 2013.

### DvineWave Inc.

/s/ Stephen R. Rizzone

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Stephen R. Rizzone  
Chief Executive Officer and Director  
(Principal Executive Officer)

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Stephen R. Rizzone and Thomas Iwanski and each of them, his true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, severally, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, any subsequent registration statements pursuant to Rule 462 of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof. This power of attorney may be executed in counterparts.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Dated: December 16, 2013

/s/ Stephen R. Rizzone

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Stephen R. Rizzone  
Chief Executive Officer and Director  
(Principal Executive Officer)

Dated: December 16, 2013

/s/ Michael Leabman

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Michael Leabman  
Chief Technology Officer and Director

Dated: December 16, 2013

/s/ Thomas Iwanski

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Thomas Iwanski  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

Dated: December 16, 2013

/s/ Gregory Brewer

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Gregory Brewer, Director



January 23, 2013

Michael Leabman  
DvineWave Inc.  
207 Veritas Court  
San Ramon, CA 94582

Re: Engagement Agreement

Dear Mr. Leabman:

This letter agreement (the "Agreement") confirms the terms and conditions that will govern the DvineWave Inc. (together with its affiliates, subsidiaries, predecessors, and successors, the "Company") engagement (the "Engagement") of MDB Capital Group, LLC (together with its affiliates, "MDB") as the Company's exclusive financial advisor and placement agent in connection with an offering or series of offerings of Company securities.

1. Exclusive Appointment; Services.

a. Exclusive Appointment. The Company hereby appoints MDB to act as its exclusive placement agent in connection with the sale of its securities, including but not limited to equity, debt, equity-linked securities, or equity capital commitments ("Securities") to one or more financial, strategic, accredited, or other investors.<sup>1</sup> The transactions currently contemplated consist of the following: (1) a Bridge Loan of approximately \$2 million; (2) a "PIPE" (Private Investment in Public Entity) offering of approximately \$6 million; and (3) a public offering of up to approximately \$20 million of Company Securities. However, it is understood that the manner, size, and timing of the contemplated transactions may change, and more or fewer transactions may occur, and the exclusive appointment of MDB covers any and all offerings or sales of any type or form, including but not limited to private placements, registered direct offerings, institutional offerings under Rule 144A and similar arrangements, mergers and acquisitions, and public offerings, on any basis, agency or underwritten (each, an "Offering").

During the term of this Agreement, the Company will not, nor will it permit any of its advisors or representatives to, engage any party other than MDB to act as placement agent or underwriter for any Offering, or to perform any other financial advisory, underwriting, or investment banking services for the Company. If the Company or, to the Company's knowledge, any of its subsidiaries, stockholders, members, partners, affiliates, advisors or representatives, is contacted by any person concerning an Offering of Securities or expressing a desire to purchase Securities, the Company shall provide to MDB all relevant details of the inquiry.

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<sup>1</sup> The term "Securities" shall have the broadest possible meaning, but shall not include executive incentive equity or other employee or consultant equity grants that are unrelated to an Offering contemplated herein and shall not include any other securities that are mutually agreed by MDB and the Company in writing to be excluded from the definition of Securities. MDB recognizes that businesses like the Company may have an opportunity to exchange equity for intellectual property or for services that are not related to investment of working capital or financing, and agrees to consider in good faith any request by the Company to exclude from the definition of "Securities" common stock issued in connection with a transaction that is not a capital raising transaction.

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b. Services. MDB represents and warrants that it is a licensed broker/dealer under applicable federal and state securities law. MDB shall assist the Company in identifying investors and potential purchasers, carrying out due diligence with respect to any potential Offering, and analyzing, structuring, and negotiating the contemplated Offering(s) on the terms and conditions set forth herein. In the case of private Offerings, MDB shall undertake to arrange such transactions on a “best efforts” basis; MDB shall underwrite public Offerings, if any, on a “firm commitment” basis (any such underwritten public Offering is a “Public Offering”). However, nothing contained herein constitutes a commitment or guarantee, express or implied, that any Offering will be consummated. MDB will not have the power or authority to bind the Company to any sale of the Securities, and any Offering will be conducted at a price and on terms satisfactory to the Company. MDB will have the right, but not the obligation, to determine the allocation of the Securities among prospective purchasers, if necessary, provided that such allocation is reasonably acceptable to the Company.

From time to time throughout the Engagement, MDB shall propose potential investors to the Company for its review and approval. MDB will use commercially reasonable efforts to answer the reasonable questions of Company in connection with Company’s review and consideration. It is not anticipated that MDB will propose potential investors that are not U.S. persons. MDB shall seek Company approval (which shall not be unreasonably withheld) prior to contacting any potential investor on behalf of the Company. The Company shall have two business days in which to object to MDB contacting any such potential investor after MDB identifies the investor; in the absence of any objection received within that time period, MDB may reasonably presume contact to be approved. Such contacts as are approved by the Company shall be included in the definition of an “MDB Investor” for the purposes of Section 2c.

2. Compensation. As consideration for the services provided under this Agreement, the Company will pay MDB a fee as follows:

a. Fee. The Company shall pay MDB a cash fee (the “Fee”) equal to ten percent (10%) of the Gross Transaction Value (defined below) of any Offering, which is due and payable at the time of each closing of an Offering (“Closing”) exclusively from the proceeds of the Offering (directly from escrow, if an escrow account is used).

As used herein, the term “Gross Transaction Value” shall be any consideration whether paid directly or indirectly to or by the Company, or an affiliate, or to any of its stockholders, directors, officers or other management personnel, or to any third party at the direction of the Company, so long as such consideration is paid in connection with an Offering, including, but not limited to:

- i. all cash, Securities or other property actually received;
  - ii. the aggregate principal amount of any indebtedness assumed by investors in connection with the Offering;
  - iii. all contingent future payments (including, but not limited to, milestone payments, royalties, or any other payments based upon future sales, profits or otherwise) as actually received;
  - iv. any payments for non-compete covenants or consulting agreements received from investors;
  - v. the net value of any liabilities assumed by investors or otherwise paid or to be paid by investors or out of proceeds of the Offering; and
  - vi. the net value of any excess benefits which are realized by any party or any stockholder, director, officer, employee or agent thereof as a result of contractual arrangements providing for benefits to it which are greater than those which would be reasonably expected to be available to it on an arm's length basis.
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If the Gross Transaction Value is paid in whole or in part in the form of Securities, the value of such Securities, for purposes of calculating MDB's fee, shall be deemed to be the fair market value thereof on the day prior to the Closing, as the Company and MDB shall mutually agree; provided, however, that if such Securities consist of freely trading Securities for which there is an existing public trading market, the fair market value thereof shall be deemed to be the average of the last sales prices for such Securities on the ten (10) trading days ending five (5) days prior to Closing. With respect to contingent or non-contingent future payments, the value will be determined, and the payment made, at such future date as actually received.

b. Warrants. In addition to the Cash Fee, immediately upon Closing, the Company shall sell to MDB warrants ("Warrants") to purchase the same type and character of Securities as are issued in the Offering (e.g., Common Stock), in an amount equal to ten percent (10%) of the aggregate Securities issued in the Offering for the sum of \$1,000. Such Warrants will be for a term of five (5) years at an exercise price equal to 120% (one hundred twenty percent) of the price paid by investors in the Offering. The Warrants will contain cashless exercise and anti-dilution provisions and representations and warranties normal and customary for warrants issued to placement agents or underwriters, and will not be callable or terminable prior to the expiration date. No adjustment will be made to the exercise price or number of shares underlying the Warrants in the event of subsequent financings. Common stock underlying the Warrants will have identical registration rights as provided to investors in the Offering, including "piggyback" registration rights on the registrations of the Company or demand registrations (voting with the other registrable securities to effect any such demand) by any later round of investors. The Company shall bear all costs and expenses of registration, including the filing and clearing of one or more registration statements. The Warrants may be issued to any persons or entities designated by MDB.

c. Other Fee Provisions; Fee Tail. The entire Fee and Warrants will be payable in respect of any other sale or placement of Company Securities that closes or is in process during the term of this Agreement, regardless of whether such sale has been arranged by MDB, by another agent, or directly by the Company. Upon termination of this Agreement for any reason, the Company shall promptly pay MDB its accrued but unpaid fees and unreimbursed expenses incurred up to and as of the date of termination. Notwithstanding any termination of this Agreement, MDB shall be entitled to the entire Fee and Warrants set forth in Section 2(a)-(b) if, within two (2) years of the later to occur of (i) the termination of this Agreement or (ii) the last Closing of any Offering arranged by MDB, the Company consummates or enters into an agreement for the sale of Securities or to obtain financing or other benefit with any person or entity contacted by MDB in connection with this engagement as approved by the Company pursuant to Section 1b or with which the Company or any of its agents on behalf of the Company first made contact without the involvement of MDB during the term of this Engagement (each, an "MDB Investor"). Any and all such fees shall be payable upon the Closing of any such sale.

d. Expenses. The Company is responsible for all costs and expenses associated with any Offering of its Securities. Promptly upon request, the Company shall reimburse MDB for all reasonable out-of-pocket expenses incurred in connection with this Engagement, including but not limited to reasonable travel, printing, and the fees and expenses of legal counsel and any other independent advisors selected and retained by MDB (with the Company's consent, which shall not be unreasonably withheld), subject to the following:

i. MDB Expenses. With the exception of legal fees and expenses, any single expense in excess of \$1,000 (one thousand dollars) will not be incurred without the Company's prior approval, which shall not be unreasonably withheld. In addition, the Company's obligation to reimburse such ordinary expenses prior to the securing of bridge or other interim financing shall be limited to the sum of \$10,000 (ten thousand dollars). Notwithstanding the foregoing limitation, any reasonable reimbursable expenses incurred but not reimbursed prior to bridge financing due to said limitation shall be reimbursed after the bridge financing and the cap shall be thereafter lifted, subject to the Company's continued right to approve expenses over \$1,000. Upon execution of this Agreement, the Company shall deposit with MDB a fully refundable expense retainer of \$10,000 (ten thousand dollars).

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ii. Legal Expenses. It is understood that the amount of MDB's legal expenses necessarily depends on the manner and size of any Offering the Company pursues. Prior to MDB's engagement of counsel with respect to any Offering, public or private, the Company shall deposit with MDB a refundable legal fee retainer of \$25,000 (twenty-five thousand dollars). With respect to any single private Offering, the Company shall not be expected to reimburse MDB more than \$25,000 (twenty-five thousand dollars) in legal fees. It is understood that the fees of MDB's counsel for any Public Offering ("Underwriter's Counsel") will significantly exceed \$25,000 but will not exceed the market rate for similar services by counsel of commensurate reputation, experience, and skill; legal fees for Underwriter's Counsel shall be negotiated in good faith and approved by the Company (which approval shall not be unreasonably withheld) prior to commencement of any work by Underwriter's Counsel with respect to any Public Offering of Company Securities, it being understood that in no event will MDB advance legal fees on the Company's behalf.

e. Payments. All payments to be made to MDB hereunder will be made in cash by wire transfer of immediately available U.S. funds. Except as expressly set forth herein, no fee payable to MDB hereunder shall be credited against any other fee due to MDB. The obligation to pay any fee or expense set forth herein shall be absolute and unconditional and shall not be subject to reduction by way of setoff, recoupment or counterclaim.

3. Manner of Offering; Representations and Warranties of the Company. The Company warrants and agrees that:

a. Due Diligence. The Company will fully cooperate with MDB in any due diligence investigation reasonably requested by MDB in connection with the Engagement and will use commercially reasonable efforts (or in the case of a request in connection with a Public Offering, best efforts) to furnish MDB with such information with respect to the business, operations, assets, liabilities, financial condition and prospects of the Company, including but not limited to financial statements, certificates of its senior officers regarding such information, and customary opinions of counsel and customary letters or opinions of accountants, and such other documents as MDB may from time to time reasonably request (the "Company Information") to assist in preparing a private placement memorandum, registration statement, or similar document for use in connection with any Offering and will provide MDB with access to the officers, directors, employees, accountants, counsel and other representatives (collectively, the "Representatives") of the Company. It is acknowledged that the practice of requesting legal opinions in private Offerings is declining in prevalence and that the scope of such opinions, when given, is also declining. The Company represents and warrants that all Company Information provided to MDB, including but not limited to the Company's financial statements, will be complete and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and confirms that MDB (i) will use and rely upon the accuracy and completeness of all such Company Information without independently investigating or verifying same; (ii) has not been retained to independently verify any such Company Information; (iii) assumes no responsibility for the accuracy, completeness, or adequacy for any purpose of such Company Information or any other information regarding the Company; and (iv) will not make any appraisal of any assets of the Company.

b. Offering Materials. The Company will be solely responsible for the contents of the private placement memorandum, registration statement, or other offering document (as such may be amended or supplemented from time to time, and including any information incorporated therein by reference, the "Offering Materials") and any and all other written or oral communications provided by or on behalf of the Company to any actual or prospective purchaser of the Securities, and the Company represents and warrants that the Offering Materials (other than with respect to any financial projections contained therein, if any), registration statement, and such other communications will not, as of the date of the offer or sale of the Securities, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. With respect to any financial projections that may be contained in the Offering Materials (the "Projections"), the Company represents and warrants that the Projections will be made with a reasonable basis and in good faith and that the Projections will represent the best then-available estimate and judgment as to the future financial performance of the Company based on the assumptions to be disclosed therein, which assumptions will be all the assumptions that are material in forecasting the financial results of the Company and which will reflect the best then-available estimate of the events, contingencies and circumstances described therein. The Company authorizes MDB to provide the Offering Materials and related communications to prospective and final Company-approved purchasers of the Securities.

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If, at any time prior to the completion of the offer and sale of the Securities, an event occurs that would cause the Offering Materials, registration statement, or other selling communications to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or that would cause a material change in the Company's view of the likelihood of achievement of the Projections or the reasonableness of the underlying assumptions, then the Company will notify MDB immediately of such event, and MDB will suspend solicitations of the prospective purchasers of the Securities until such time as the Company shall prepare a supplement or amendment to the Offering Materials, registration statement, and selling communications that corrects such statement or omission or revises the Projections or such assumptions.

c. Reliance Upon Company Representations and Opinions of Counsel, Etc. The Company agrees that any representations and warranties made by it to any investor in a private Offering shall be deemed also to be made to MDB for its benefit, and MDB shall be entitled to rely upon the same opinions of counsel and accountant's letters that are provided to purchasers of the Securities in such Offering. Accordingly, the Company shall use commercially reasonable efforts to cause any such opinion or letter delivered to any investors in the Offering also to be addressed and delivered to MDB, or to cause such counsel or accountant to deliver to MDB a letter authorizing it to rely upon such opinion or letter. In connection with any Public Offering, the Company and MDB expect to enter into a mutually agreeable underwriting agreement in customary form, which would be expected to supersede this Engagement Agreement. For convenience and clarity of public disclosure, the parties agree to cooperate and attempt in good faith to incorporate Material Surviving Provisions into such underwriting agreement or a short and simple additional agreement or supplement to such underwriting agreement entered into at or around the time of effectiveness of the underwriting agreement. "Material Surviving Provisions" shall mean any surviving provisions of this Engagement Agreement that would be material in the context of such Public Offering and that may be required to be performed after the effectiveness of the registration statement filed in connection with such Public Offering.

d. Compliance with State Securities Laws. The Company will be solely responsible for all applicable state securities law compliance with respect to the offer and sale of the Securities, including the timely making of any filings or taking other actions required under the applicable securities or "blue sky" laws or regulations of such domestic states as MDB reasonably may specify and the continuation of qualifications in effect for so long as may be required. The Company will provide MDB with copies of any pertinent filings at or around the time they are made, and to the extent any filing contains information relating to MDB and/or the terms of this Engagement, MDB will be provided a copy of the intended filing sufficiently in advance to permit time for review and comment. Before contacting any possible investor in connection with any Offering and, in any event, before providing any Offering Materials to any possible investor, MDB will provide to the Company its CRD number and make a good-faith attempt to disclose to the Company all other broker-dealer or investment adviser registration or exemption information it reasonably believes in its experience is required to be disclosed to any government authority in any securities filing required in connection with the Offering; further, MDB will promptly, and in any event within two business days of request from the Company provide such other information as the Company reasonably believes is required regarding MDB or its associates or affiliates to complete any securities law filing in order to comply with applicable law. Compliance with state securities laws will be at the Company's sole expense.

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e. Offerings Exempt from Registration. To the extent that any Offering is designated as one to be made pursuant to an applicable exemption from registration under the Securities Act of 1933, as amended (the "Act"), the Company agrees that it will not, directly or indirectly, make any offer or sale of any Securities which would cause the contemplated Offering to fail to be entitled to the applicable exemption or unreasonably limit the availability of a public registered Offering or an Offering in which MDB will act. In particular, the Company represents and warrants to MDB that it has not, directly or indirectly, made any offers or sales of Securities which would cause the Offering of the Securities contemplated hereunder to fail to be entitled to the exemption from registration afforded by Section 4(2) of the Act. As used herein, the terms "offer" and "sale" have the meanings specified in Section 2(3) of the Act.

To the extent that an Offering is designated as one to be made pursuant to Regulation D under the Act, the offer and sale of the Securities will comply with certain requirements of Regulation D, including, without limitation, the requirements that:

(i) The Company will not offer or sell the Securities by means of any form of general solicitation or general advertising.

(ii) The Company will not offer or sell the Securities to any person who is not an "accredited investor" (as defined in Rule 501 under the Act).

(iii) The Company will exercise reasonable care to assure that the purchasers of the Securities are not underwriters within the meaning of Section 2(11) of the Act and, without limiting the foregoing, that such purchasers will comply with Rule 502(d) under the Act.

(iv) The Company will not make any filings with the Securities and Exchange Commission with respect to the offer and sale of the Securities without prior notification to MDB.

f. Audits. The Company shall be solely responsible for performing, and shall perform, all financial audits necessary to meet the listing requirements of the NASDAQ, NYSE, or AMEX exchanges, as appropriate. For the avoidance of doubt, no financial audits will be required in connection with private Offerings.

g. Patent Drafting Firm. Prior to Closing of an Offering, the Company shall retain a professional patent drafting firm reasonably acceptable to MDB in terms of scope of services and fees.

h. Additional Pre-Offering Requirements. Prior to any Offering, the Company shall ensure that its capital structure, employee stock option plan, and Board of Directors are reasonably acceptable to MDB and, where applicable, the Company shall cause all holders to convert all notes and preferred shares to Common Stock with the extinguishment of attached rights. As a condition to making any changes at MDB's request in connection with this subsection, the Company may require reasonable employment agreements or other protective agreements be entered into with one or more officers of the Company.

j. Lock-Up Period. In the event of an IPO, all shares held by principals in the Company, shares received pursuant to a merger, if any, which closes within ninety days of the IPO closing, all Fee shares or Warrants and all shares received pursuant to exercise of such Warrants received by MDB hereunder, and all fee shares/warrants and all shares received pursuant to exercise of such Warrants received by the IP Development Company pursuant to subsection (j) above may not be sold or redeemed for a period of 12 months following the initial listing on an exchange. Investors in bridge financing, if any, will be locked up for a period of no less than 180 days following initial listing.

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k. Investor Relations Firm; Investor Conference Calls. For a period of two (2) years from the Closing of a Public Offering, the Company shall retain an investor relations firm reasonably acceptable to MDB in terms of scope of services and fees, which firm should have the ability to perform investor relations and product and company branding functions. For a period of two (2) years from the Closing of a Public Offering, the Company, with the aid of the investor relations firm, will announce and hold investor and public conference calls at least quarterly, at which the Company will review its quarterly and annual financial results and give guidance for the financial results of the then fiscal year, which information will also be made available in a press release and Form 8-K.

l. Post-Offering Commitments. For a period of two (2) years from the Closing of a Public Offering, the Company shall:

(i) subscribe to the Depository Trust Clearing Corporation weekly transfer sheet reports, and provide such reports to MDB immediately upon receipt; and

(ii) no less than 24 hours prior to making any public filing or announcement, provide to MDB all such proposed public filings and announcements for its review and comment.

4. Confidentiality. MDB acknowledges that in connection with the Engagement, the Company will provide MDB with information which the Company considers to be confidential and which will be marked with some methodology that indicates the Company's intention to preserve the information as confidential ("Confidential Information"). MDB agrees to employ all reasonable efforts to keep the Confidential Information secret and confidential, using no less than the degree of care employed by MDB to preserve and safeguard its own confidential information, and shall not disclose or reveal the Confidential Information to anyone except its employees, consultants and contractors who have an obligation of confidentiality with MDB. MDB will not use the Confidential Information except in connection with its performance of services hereunder, unless disclosure is required by law, court order, or any government, regulatory or self-regulatory agency or body in the opinion of MDB's counsel, in which event MDB will provide the Company with reasonable advance notice of such disclosure. These obligations do not apply to any portion of Confidential Information which: (a) is or becomes generally available to the public other than through a breach of this Agreement; (b) was rightfully in MDB's possession or readily available to MDB from another source not under obligation of secrecy to the Company prior to the disclosure; (c) is rightfully received by MDB from another source on a non-confidential basis; (d) is disclosed by the Company to an unaffiliated third party free of any obligation of confidence; (e) is developed by or for MDB without reference to the Company's Confidential Information; or (f) is released for disclosure with the Company's written consent. Notwithstanding any termination of this Agreement, MDB's confidentiality obligations shall survive (1) in perpetuity under the Uniform Trade Secrets Act ("UTSA") in respect of any Trade Secret as defined by the UTSA, and (2) in respect of any non-Trade Secret, for a period of two years from the date of disclosure.

Notwithstanding any of the foregoing, MDB is authorized to transmit to any Company-approved prospective investor the following: confidential material furnished by the Company or prepared by MDB in conjunction with the Company for transmission to prospective investors in a private Offering; and forms of purchase agreements and any other legal documentation supplied to MDB for transmission to any prospective investor by or on behalf of the Company. The Company authorizes MDB to execute, on the Company's behalf, confidentiality agreements in a form acceptable to the Company with such Company-approved prospective investors.

5. Indemnification. The Company agrees to indemnify MDB and related persons in accordance with the indemnification agreement attached as Exhibit A, which is incorporated herein by this reference. The provisions of Exhibit A shall survive any termination or expiration of this Agreement.

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6. Term and Termination. MDB's Engagement will commence upon the execution of this Agreement and shall continue in effect for a period of 180 (one hundred eighty) days (the "Initial Term"). During the Initial Term, this agreement may not be terminated by the Company absent gross negligence or willful misconduct of MDB. After the expiration of the Initial Term, the Agreement shall automatically renew and continue in effect until it is terminated by either party with sixty (60) days' written notice to the other pursuant to Section 19. Upon termination of this Agreement for any reason, the rights and obligations of the parties hereunder shall terminate, except for the obligations set forth in Sections 2 (including, without limitation, to the extent payment is required under Section 2(c)), 3(b)-(g), 3(j)-(l), 5,6, 8-19, and Exhibit A, which shall survive termination.

7. Additional Services; Right of First Refusal. Should the Company request MDB to perform any services or act in any capacity not specifically addressed in this Agreement, such services or activities shall constitute separate engagements, the terms and conditions of which will be embodied in separate written agreement(s) and will include appropriate indemnification provisions. The indemnity provisions of Exhibit A shall apply to any such additional engagements (whether or not covered by a separate written agreement), unless and until superseded by a written indemnity provision set forth in a subsequent agreement.

8. Other Transactions; Disclaimers. The Company acknowledges that MDB is engaged in a wide range of investing, investment banking and other activities (including investment management, corporate finance, securities issuance, trading and research and brokerage activities) from which conflicting interests or duties, or the appearance thereof, may arise. Information held elsewhere within MDB but not accessible (absent a breach of internal procedures) to its investment banking personnel providing services to the Company will not under any circumstances affect MDB's responsibilities to the Company hereunder. The Company further acknowledges that MDB and its affiliates have and may continue to have investment banking, broker-dealer and other relationships with parties other than the Company pursuant to which MDB may acquire information of interest to the Company. MDB shall have no obligation to disclose to the Company or to use for the Company's benefit any such non-public information or other information acquired in the course of engaging in any other transaction (on MDB's own account or otherwise) or otherwise carrying on the business of MDB. The Company further acknowledges that from time to time MDB's independent research department may publish research reports or other materials, the substance and/or timing of which may conflict with the views or advice of MDB's investment banking department and/or which may have an adverse effect on the Company's interests in connection with the transactions contemplated hereby or otherwise. In addition, the Company acknowledges that, in the ordinary course of business, MDB may trade the securities of the Company for its own account and for the accounts of its customers, and may at any time hold a long or short position in such securities. MDB shall nonetheless remain fully responsible for compliance with federal and state securities laws in connection with such activities.

It is expressly understood and agreed that MDB has not provided nor is undertaking to provide any advice to the Company relating to legal, regulatory, accounting, or tax matters. The Company acknowledges and agrees that it has relied and will continue to rely on the advice of its own legal, tax and accounting advisors in all matters relating to any Offering contemplated hereunder.

The Company further acknowledges and agrees that MDB will act solely as an independent contractor hereunder, and that MDB's responsibility to the Company is solely contractual in nature and that MDB does not owe the Company or any other person or entity, including but not limited to its shareholders, any fiduciary or similar duty as a result of the Engagement or otherwise.

The Company agrees that neither MDB nor any of its controlling persons, affiliates, directors, officers, employees or consultants shall have any liability to the Company or any person asserting claims on behalf of or in right of the Company for any losses, claims, damages, liabilities or expenses arising out of or relating to the Engagement, unless it is finally judicially determined that such losses, claims, damages, liabilities or expenses resulted solely from the gross negligence or willful misconduct of MDB.

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9. Work Product and Announcements. MDB's advice shall be the sole proprietary work product and intellectual property of MDB, and such advice may not be disclosed, in whole or in part, to third parties other than the Company's professional advisors, as necessary, without the prior written permission of MDB unless such disclosure is required by law. The Company acknowledges that MDB, at its option and expense, and no earlier than the first to occur of (i) the signing of definitive agreements regarding the Offering or (ii) the public announcement of the Offering by the Company, may place announcements and advertisements or otherwise publicize the Offering (which may include the reproduction of the Company's logo and a hyperlink to the Company's website) on MDB's website and in such financial and other newspapers and journals as it may choose, stating that MDB has acted as an agent in connection with or advised the Company about such Offering.

10. Complete Agreement; Amendments; Assignment. This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes and cancels any prior communications, understandings and agreements, whether oral or written, between MDB and the Company. This Agreement may not be amended or modified except in writing. The rights of MDB hereunder shall be freely assignable to any affiliate of MDB, and this Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against each of the parties and their successors and assigns.

11. Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and, with the exception of the rights and benefits conferred upon the Indemnified Parties by Section 5 and Exhibit A of this Agreement, shall not be deemed or interpreted to confer any rights upon any third parties.

12. Governing Law; Jurisdiction; Venue. All aspects of the relationship created by this Agreement shall be governed by and construed in accordance with the laws of the State of California, applicable to contracts made and to be performed in California, without regard to its conflicts of laws provisions. All actions and proceedings which are not submitted to arbitration pursuant to Section 13 hereof shall be heard and determined exclusively in the state and federal courts located in the County of Los Angeles, State of California, and the Company and MDB hereby submit to the jurisdiction of such courts and irrevocably waive any defense or objection to such forum, on forum non conveniens grounds or otherwise. The parties agree to accept service of process by mail, to their principal business address, addressed to the chief executive officer and secretary thereof. The parties hereby agree that this Section 12 shall survive the termination and/or expiration of this Agreement. Each of the Company and MDB will use commercially reasonable efforts to cooperate in connection with a reasonable request of the other to provide information to facilitate compliance with applicable law and regulation in connection with their respective performance under this Agreement.

13. Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Los Angeles (with the exception of claims to enforce the indemnity provision contained herein, which may, at the option of the party seeking relief, be submitted either to arbitration or to any court of competent jurisdiction). The arbitration shall be administered either by FINRA Dispute Resolution pursuant to its Code of Arbitration Procedure, or if FINRA cannot or does not accept the arbitration, by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

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**The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.**

**The parties hereby agree that this Section 13 shall survive the termination and/or expiration of this Agreement.**

The Company's and MDB's consent to Arbitration are confirmed by initialing below:

\_\_\_\_\_  
Company

\_\_\_\_\_  
MDB

14. Severability. Should any one or more covenants, restrictions and provisions contained in this Agreement be held for any reason to be void, invalid or unenforceable, in whole or in part, such unenforceability will not affect the validity of any other term of this Agreement, and the invalid provision will be binding to the fullest extent permitted by law and will be deemed amended and construed so as to meet this intent. To the extent any provision cannot be so amended or construed as a matter of law, the validity of the remaining provisions shall be deemed unaffected and the illegal or invalid provision will be deemed stricken from this Agreement.

15. Section Headings. The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

16. Accounting. Any calculation, computation or accounting that may be required under this Agreement shall be made in accordance and conformity with the Generally Accepted Accounting Principles and other standards as determined by the Financial Accounting Standards board and regulatory agencies with appropriate jurisdiction.

17. Counterparts. This Agreement may be executed via facsimile transmission and may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument.

18. Patriot Act. MDB hereby notifies the Company that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Company in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

19. Notice. All notices, demands, and other communications to given pursuant to this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery using a nationally recognized courier service, sent by facsimile transmission, or emailed. Notice shall be deemed received: (a) if personally delivered, upon the date of delivery to the address of the receiving party; (b) if sent by overnight courier, the date actually received by the recipient; (c) if sent by facsimile or email, when sent. The parties will each promptly notify the other of any changes to the following contact information.

Notices to MDB shall be sent to:

MDB Capital Group, LLC  
401 Wilshire Blvd., Suite 1020  
Santa Monica, California 90401  
Fax: (310) 526-5020  
Email: d@mdb.com

Notices to the Company shall be sent to:

DvineWave Inc.  
Attention Mr. Michael Leabman  
207 Veritas Court  
San Ramon, CA 94582

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With a copy to Company counsel at:

Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, IL, 60606  
Reference #10484

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MDB Engagement Letter

January 23, 2013

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If the above accords with your understanding and agreement, kindly indicate your consent hereto by signing below. We look forward to a long and successful relationship with you.

Very truly yours,

MDB CAPITAL GROUP LLC

/s/ Anthony DiGiandomenico

By: Anthony DiGiandomenico, Partner  
Head of Investment Banking

ACCEPTED AND AGREED TO  
AS OF THE DATE FIRST ABOVE WRITTEN:

DvineWave Inc.

/s/ Michael Leabman

By: Michael Leabman  
President

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**EXHIBIT A**  
**INDEMNIFICATION AGREEMENT**

In further consideration of the engagement by DvineWave Inc. (the "Company") of MDB Capital Group LLC ("MDB") to act as the Company's exclusive placement agent in connection with a potential Offering or Offerings of securities, as such engagement is described in that letter agreement between us of even date (the "Engagement Agreement"), the Company agrees to indemnify MDB and certain other persons provided for herein, as follows:

A. Indemnification Generally. The Company hereby agrees to indemnify and hold harmless MDB Capital, its directors, officers, agents, employees, members, affiliates, subsidiaries, counsel, and each other person or entity who controls MDB or any of its affiliates within the meaning of Section 15 of the Securities Act (collectively, the "Indemnified Parties") to the fullest extent permitted by law from and against any and all losses, claims, damages, expenses, or liabilities (or actions in respect thereof) ("Losses"), joint or several, to which they or any of them may become subject under any statute or at common law, and to reimburse such Indemnified Parties for any reasonable legal or other expense (including but not limited to the cost of any investigation, preparation, response to third party subpoenas) incurred by them in connection with any litigation or administrative or regulatory action ("Proceeding"), whether pending or threatened, and whether or not resulting in any liability, insofar as such losses, claims, liabilities, or litigation arise out of or are based upon (1) the engagement of MDB pursuant to the Engagement Agreement or subsequent agreement of similar purpose between the Company and MDB (an "Additional Engagement Agreement"); (2) the Offering of Company Securities to third parties contemplated by the Engagement Agreement or Additional Engagement Agreement, (3) any other matter relating to any Offering of Company Securities referred to or contemplated by the Engagement Agreement or Additional Engagement Agreement; (4) any untrue statement or alleged untrue statement of any material fact contained in the private placement memorandum, offering materials, registration statement, or other offering or selling document (as may be amended or supplemented and including any information incorporated therein by reference, the "Company Documentation"), or in any other written or oral communication provided by or on behalf of the Company to any actual or prospective purchaser of Securities (as that term is defined in the Engagement Agreement), unless such untrue statement or alleged untrue statement arises solely from information supplied by any members, officers, agents or employees of MDB, in writing specifically for use therein; or (5) the omission or alleged omission to state in the Company Documentation a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that while the indemnity provisions herein shall include any and all claims regardless of whether MDB Capital's sole negligence, active or passive, contributed to losses, they shall not apply to (i) amounts paid in settlement of any such litigation if such settlement is effected without the consent of the Company, which consent will not be unreasonably withheld, or (ii) Losses arising solely from the willful misconduct or gross negligence of Indemnified Parties; and provided that the Company will not be responsible for the fees and expenses of more than one counsel to all Indemnified Parties, in addition to appropriate local counsel, unless in the reasonable judgment of any Indemnified Party there exists a potential conflict of interest which would make it inappropriate for one counsel to represent all such Indemnified Parties.

B. Reimbursement. The Company will reimburse all Indemnified Parties for all reasonable expenses (including, but not limited to, reasonable fees and disbursements of no more than one counsel for all Indemnified Parties) incurred by any such Indemnified Parties in connection with investigating, preparing, and defending any such action or claim, whether or not in connection with pending or threatened litigation in connection with the transaction to which an Indemnified Parties is a party, promptly as such expenses are incurred or paid (unless the Indemnified Parties request they be paid in advance pursuant to Subsection C below).

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C. Advances. Notwithstanding any other provision hereof or any other agreement between the parties, the Company shall advance, to the extent not prohibited by law, all expenses reasonably anticipated to be incurred by or on behalf of the Indemnified Parties in connection with any Proceeding, whether pending or threatened, within fifteen (15) days of receipt of a statement or statements ("Statement(s)") from the Indemnified Parties, or any of them, requesting such advances from time to time. This advancement obligation shall include any refundable retainers of counsel retained by Indemnified Parties (as selected by Indemnified Parties in their sole and absolute discretion), subject to the restriction that the Company shall not be required to advance legal fees of the Indemnified Persons with respect to more than one (1) law firm that is representing the Indemnified Parties. If, due to conflict or other issues, the Indemnified Persons engage more than one law firm to represent them (or any of them), the Company's indemnification obligations under this Exhibit A shall only apply as against one law firm representing MDB or the majority of the Indemnified Parties. Any Statement requesting advances shall evidence the expenses anticipated or incurred by the Indemnified Parties with reasonable particularity and may include only those expenses reasonably expected to be incurred within the 180-day period following each Statement. In the event some portion of the amounts advanced pursuant to this Section C are unused, or in the event a court of competent jurisdiction finally determines that the Indemnified Parties are not entitled to be indemnified against certain expenses, Indemnified Parties shall return the unused or disallowed portion of any advances within ninety (90) days of the final disposition of any Proceeding to which such advances pertain, together with interest thereon at an annual percentage rate of 6%.

D. Contribution. If such indemnification is for any reason not available or insufficient to hold an Indemnified Party harmless, the Company agrees promptly to contribute to the Losses involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Company, on the one hand, and by MDB, on the other hand, with respect to the Engagement or similar services under any Additional Engagement Agreement or, if such allocation is determined by a court or arbitral tribunal to be unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of the Company on the one hand and of MDB on the other hand; provided, however, that, to the extent permitted by applicable law, the Indemnified Parties shall not be responsible for amounts which in the aggregate are in excess of the amount of all cash fees, exclusive of costs, actually received by MDB from the Company at the Closing in connection with the Engagement or similar services under any Additional Engagement Agreement. Relative benefits to the Company, on the one hand, and to MDB, on the other hand, with respect to the Engagement shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the Company in connection with the Offering, whether or not consummated, bears to (ii) all fees received or proposed to be received by MDB in connection with the applicable engagement. Relative fault shall be determined, in the case of Losses arising out of or based on any untrue statement or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact, by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company to MDB and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act of 1933, as amended) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

E. No Liability Without Gross Negligence or Misconduct. The Company agrees that no Indemnified Party shall have any liability to the Company or its respective owners, successors, heirs, parents, affiliates, security holders or creditors for any Losses, except to the extent such Losses are determined, by a final, non-appealable judgment by a court or arbitral tribunal of competent jurisdiction, to have resulted solely from such Indemnified Person's gross negligence or willful misconduct.

F. Notice. MDB agrees, promptly upon receipt, to notify the Company in writing of the receipt of written notice of the commencement of any action against it or against any other Indemnified Parties, in respect of which indemnity may be sought hereunder; however, the failure so to notify the Company will not relieve it from liability under Sections A above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the Company of substantial rights or defenses.

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G. Settlement. The Company will not, without MDB's prior written consent, settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any pending Proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is a party therein) unless the Company has given MDB reasonable prior written notice thereof and such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Proceeding. The Company will not permit any such settlement, compromise, consent or termination to include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an Indemnified Party, without such Indemnified Party's prior written consent. No Indemnified Party seeking indemnification, reimbursement or contribution under this Agreement will, without the Company's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any Proceeding referred to herein or admit fault, culpability or failure to act by or on behalf of the Company or any Indemnified Party.

H. Survival; Successors. The indemnity, contribution and expense reimbursement obligations set forth herein shall be in addition to any liability the Company may have to any Indemnified Party at common law or otherwise (but not duplicative of or effective to result in any multiplicative return of Losses or of any such liability of the Company), and shall remain operative and in full force and effect notwithstanding the termination of this Agreement, the closing of the contemplated Offering, and any successor of MDB or any other Indemnified Parties shall be entitled to the benefit of the provisions hereof. Prior to entering into any agreement or arrangement with respect to, or effecting, any merger, statutory exchange or other business combination or proposed sale or exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Company set forth herein, the Company will promptly notify MDB in writing thereof and, if requested by MDB, shall arrange in connection therewith alternative means of providing for the obligations of the Company set forth herein, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and on terms and conditions reasonably satisfactory to MDB.

I. Consent to Jurisdiction; Attorneys' Fees. Solely for the purpose of enforcing the Company's obligations hereunder, the Company consents to personal jurisdiction, service and venue in any court proceeding in which any claim subject to this Agreement is brought by or against any Indemnified Party other than MDB. In any action for enforcement of this indemnity provision, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, of bringing such an action.

DVINEWAVE INC.

/s/ Michael Leabman

By: Michael Leabman  
President



January 23, 2013

Michael Leabman  
DvineWave Inc.  
207 Veritas Court  
San Ramon, CA 94582

Re: Engagement Letter for Strategic Consulting Services

Dear Mr. Leabman:

MDB Capital Group, LLC (together with its affiliates, "MDB") is a financial and strategic advisory firm helping companies develop key assets and plans to support their business objectives. Our unique methodologies are intended to maximize returns on innovation and expand shareholder value through strategic consulting, corporate development, and innovation management. As a result of our working together, many clients use MDB's brand to enhance their own brand as top innovators, realizing a sustainable competitive advantage in their respective fields.

We understand that DvineWave Inc. (together with its affiliates, subsidiaries, predecessors, and successors, the "Company") is seeking the services provided by MDB, so as to build and maintain its overall corporate profile and to assist the Company in preparing for a possible IPO event towards the end of 2013. We are pleased to propose a program we believe is designed to enhance the Company's valuation, develop the investor "story," and set the foundation for long-term stakeholder value.

This letter agreement (the "Agreement") confirms the terms and conditions that will govern the Company's engagement of MDB to provide financial, strategic, and intellectual property advisory services (the "Engagement").

1. Services.

a. Services Provided. MDB shall assist the Company with all aspects of its business, strategic, and intellectual property development, including:

BUSINESS STRATEGY ACTIVITIES

- Assessing the Company's market landscape;
  - Formulation of the Company's business strategy;
  - Formulation of the Company's financial plan, including assessment of financing options;
  - Defining technology milestones;
  - Creating development and commercialization strategy;
  - Identifying and recruiting key members of the management team and Board of Directors;
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- Corporate structuring; and
- General corporate advice, as needed and requested.

#### IP RELATED ACTIVITIES

- Inventory and assessment of the Company's intellectual property portfolio (the "Assets"), using PatentVest®, MDB's proprietary IP business intelligence platform;
- Identification and evaluation of specific market or competitive issues pertaining to the Company's intellectual property portfolio;
- Formulation of the Company's IP strategy, including development of a comprehensive plan for invention prioritization and patent development;
- For each individual invention of the Company (an "Invention"), development of a clear strategy for Invention drafting and Invention family development roadmap;
- Preparation of a complete Invention package with technical disclosure documentation (each, a "Disclosure") for use in the Company's patent applications;
- Invention extraction;
- Identification of companies with intellectual property profiles best matching the Company's portfolio and those which will likely have the greatest value for the Company's portfolio;
- Selecting IP assets and companies for acquisition;
- Assessment of the monetization method which would be most appropriate for realizing the value of the Company's current patent assets, including but not limited to full or partial patent sale, spin-out, additional financing, etc;
- Preparation of an internal valuation memorandum, with a valuation range predicated on the most likely monetization method, with tactical recommendations on realizing the portfolio value; and
- Access to PatentVest and MDB's Patent Factory.

b. Additional Services/Exclusions. It is expressly understood and agreed that MDB has not provided nor is undertaking to provide any advice to the Company relating to legal, regulatory, accounting, or tax matters. The services provided to the Company hereunder are designed to assist, but not replace, the Company's own intellectual property counsel.

Should the Company request MDB to perform any services or act in any capacity not specifically addressed in this Agreement, such services or activities shall constitute separate engagements, the terms and conditions of which will be embodied in separate written agreement(s).

2. Compensation. As consideration for the services provided under this Agreement, the Company will pay MDB a fee as follows:
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a. Warrant. Upon the consummation of the bridge loan (or similar bridge financing) contemplated by the Company and considered under the investment banking engagement agreement between the Company and MDB of approximate even date herewith (such engagement agreement, the "Engagement Agreement" and such bridge loan or similar bridge financing, the "Bridge Financing"), the Company shall sell to MDB, for the total amount of \$1,500, a warrant, which may be issued in one or more instruments (the "Warrants") to purchase an aggregate of shares of Company common stock (the "Common Stock"), in an amount equal to ten percent (10%) of the total issued and outstanding Common Stock of the Company after giving effect to the conversion of all options, warrants and other rights to acquire securities of the Company existing or issuable on conversion of then outstanding preferred stock, options, warrants or other convertible securities as at the time immediately prior to the consummation of the Bridge Financing. For the avoidance of doubt, without duplicating in whole or in part the warrant to be issued under the Engagement Agreement as a result of the Bridge Financing, the Warrants will entitle MDB to purchase upon exercise thereof 10% of the fully diluted number of shares outstanding and that may be issued or issuable by the Company, pursuant to any form of agreement, arrangement or undertaking, immediately prior to the final consummation of the Bridge Financing, whether in one or more closings, treating all such closings as a single Bridge Financing. Such Warrants will be for a term of five (5) years at an exercise price of \$0.01 per share, shall contain cashless exercise and anti-dilution provisions and representations and warranties normal and customary for warrants issued to placement agents or underwriters, and will not be callable or terminable prior to the expiration date. No adjustment will be made to the exercise price or number of shares underlying the Warrants in the event of subsequent financings. The Common Stock underlying the Warrants will have registration rights no less favorable than those granted to any other person, including "piggyback" registration rights on the registrations of the Company or demand registrations (voting with the other registrable securities to effect any such demand) by any later round of investors. The Company shall bear all costs and expenses of registration, including the filing and clearing of one or more registration statements. The Warrants may be issued to any persons or entities designated by MDB.

b. Expenses. The Company shall fund MDB's travel and other reasonable expenses related to the Engagement, including economy class air fare, business class accommodations, ground transportation, meals and incidentals, in connection with visits by the MDB team to the Company's site. Prior to the Company securing bridge financing, if any, such expenses shall be limited to \$10,000 (ten thousand dollars). After bridge or other financing is secured, the Company shall also promptly reimburse MDB for any expenses related to the Engagement that are approved by the Company in writing in advance, with such approval not to be unreasonably withheld.

c. Payments. All payments to be made to MDB hereunder will be made in cash by wire transfer of immediately available U.S. funds. Except as expressly set forth herein, no fee payable to MDB hereunder shall be credited against any other fee due to MDB. The obligation to pay any fee or expense set forth herein shall be absolute and unconditional and shall not be subject to reduction by way of setoff, recoupment or counterclaim.

d. Compensation Earned. All compensation to MDB provided under this Agreement will be deemed fully earned as of the date of the payment or issuance, which once paid or issued is not subject to return in whole or in part or subject to reduction or further limitation. The Company waives any and all rights of set off against the compensation provided for herein, including any securities underlying any Warrants.

3. Representations and Warranties of the Company. The Company warrants and agrees that it is the true and rightful owner of all intellectual property rights in each of the Assets and Inventions submitted to MDB for analysis; that any and all technical Invention information provided to MDB may, to the actual knowledge of the officers of the Company, be transmitted across country borders subject to compliance with applicable export control and similar laws; and that no U.S. agency has suspended, revoked, or denied the Company's export privileges.

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4. Term and Termination. MDB's Engagement will commence upon the execution of this Agreement and shall continue in effect for a period of 180 (one hundred eighty) days (the "Initial Term"). After the expiration of the Initial Term, the Agreement shall automatically renew and continue in effect until it is terminated by either party with thirty (30) days' written notice to the other pursuant to Section 10. Upon termination of this Agreement for any reason, the rights and obligations of the parties hereunder shall terminate, except for the obligations set forth in Sections 2-3 and 5-18, which shall survive termination.

5. Confidentiality. MDB acknowledges that in connection with the Engagement, the Company will provide MDB with information which the Company considers to be confidential, including its trade secrets ("Confidential Information"). MDB agrees to employ all reasonable efforts to keep the Confidential Information secret and confidential, using no less than the degree of care employed by MDB to preserve and safeguard its own confidential information, and shall not disclose or reveal the Confidential Information to anyone except its employees, consultants and contractors who have an obligation of confidentiality with MDB. MDB will not use the Confidential Information except in connection with its performance of services hereunder, unless disclosure is required by law, court order, or any government, regulatory or self-regulatory agency or body in the opinion of MDB's counsel, in which event MDB will provide the Company with reasonable advance notice of such disclosure. "Confidential Information" does not include information which (a) was in the public domain or readily available to the trade or the public prior to the date of the disclosure; (b) becomes generally available to the public in any manner or form through no fault of MDB or its representatives; (c) was in MDB's possession or readily available to MDB from another source not under obligation of secrecy to the Company prior to the disclosure; (d) is rightfully received by MDB from another source on a non-confidential basis; (e) is developed by or for MDB without reference to the Company's Confidential Information; (f) is disclosed by Disclosing Party to an unaffiliated third party free of any obligation of confidence; or (g) is released for disclosure with the Company's written consent. Notwithstanding any termination of this Agreement, MDB's confidentiality obligations (1) in respect of any material that qualifies as a "Trade Secret" under the Uniform Trade Secrets Act ("UTSA") shall survive in perpetuity under the UTSA until such information ceases to be a Trade Secret, and (2) in respect of any non-Trade Secret, for a period of two years from the date of disclosure.

6. Indemnification. The Company hereby agrees to indemnify and hold harmless MDB Capital, its directors, officers, agents, employees, members, affiliates, subsidiaries, and counsel (collectively, the "MDB Indemnified Parties") to the fullest extent permitted by law from and against any and all losses, claims, damages, expenses, or liabilities (or actions in respect thereof) ("Losses"), joint or several, to which they or any of them may become subject under any statute or at common law, and to reimburse such MDB Indemnified Parties for any reasonable legal or other expense (including but not limited to the cost of any investigation, preparation, response to third party subpoenas) incurred by them in connection with any litigation or administrative or regulatory action ("Proceeding"), whether pending or threatened, and whether or not resulting in any liability, insofar as such losses, claims, liabilities, or litigation arise out of or are based upon: the Company's use or misuse (including use contrary to federal or state law) of the Disclosure(s), the Company's breach of the Representations and Warranties contained in Section 3 hereof, or any violation of U.S or other import or export controls; provided, however, that while the indemnity provisions herein shall include any and all claims regardless of whether MDB Capital's sole negligence, active or passive, contributed to losses, they shall not apply to (i) amounts paid in settlement of any such litigation if such settlement is effected without the consent of the Company, which consent will not be unreasonably withheld, or (ii) Losses arising solely from the willful misconduct or gross negligence of MDB Indemnified Parties.

The provisions of this Section 6 shall survive any termination or expiration of this Agreement.

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7. Work Product and Announcements. MDB's advice shall be the sole proprietary work product and intellectual property of MDB, and such advice may not be disclosed, in whole or in part, to third parties other than the Company's professional advisors without the prior written permission of MDB, unless such disclosure is required by law. Any document or information prepared by MDB in connection with this Engagement shall not be duplicated by the Company except as explicitly provided for hereunder or required by law. The Company acknowledges that MDB, at its option and expense, may place announcements and advertisements or otherwise publicize the Engagement (which may include the reproduction of the Company's logo and a hyperlink to the Company's website) on MDB's website and in such financial and other newspapers and journals as it may choose.

8. Limitation of Liability. MDB shall employ due care and attention in providing the services hereunder. However, the Company acknowledges that MDB does not warrant or represent the accuracy or completeness of any public information or any information provided solely by the Company used in any analysis and that inaccurate or incomplete data may affect the validity and reliability of MDB's work product, including any draft patent Disclosures. Similarly, MDB makes no representation or warranty with respect to the non-infringement of any of the Assets or Inventions described in the Disclosure(s). MDB makes no warranty, representation, promise, or undertaking with respect to any legal or financial consequences of, or any other consequences or benefits obtained from the use of any work product hereunder, including the Disclosure(s), including any representation that any patent(s) will be granted. The Company assumes all risks related to documentation or technical information and data which may be subject to U.S. export controls or export or import restrictions in other countries. MDB SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MDB SHALL NOT BE LIABLE ON ACCOUNT OF ANY ERRORS, OMISSIONS, DELAYS, OR LOSSES UNLESS CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER MDB NOR ANY OF ITS CONTROLLING PERSONS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR CONSULTANTS WILL BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY (INCLUDING WITHOUT LIMITATION LOST PROFITS, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES) ALLEGED TO BE CAUSED BY USE OF THE DISCLOSURE(S) OR OTHER SERVICES PROVIDED HEREUNDER. MDB'S LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS PAID BY THE COMPANY TO MDB WITH REGARD TO THE PROVISION OF THE SPECIFIC SERVICES THAT GAVE RISE TO THE CLAIM OF LIABILITY, BUT IN NO EVENT WILL SUCH LIABILITY EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO MDB PURSUANT TO SECTION 2.

9. Other Transactions; Disclaimers. The Company acknowledges that MDB is engaged in a wide range of investing, investment banking and other activities (including investment management, corporate finance, securities issuance, trading and research and brokerage activities) from which conflicting interests or duties, or the appearance thereof, may arise. Information held elsewhere within MDB but not accessible (absent a breach of internal procedures) to its investment banking personnel providing services to the Company will not under any circumstances affect MDB's responsibilities to the Company hereunder. The Company further acknowledges that MDB and its affiliates have and may continue to have investment banking, broker-dealer and other relationships with parties other than the Company pursuant to which MDB may acquire information of interest to the Company. MDB shall have no obligation to disclose to the Company or to use for the Company's benefit any such non-public information or other information acquired in the course of engaging in any other transaction (on MDB's own account or otherwise) or otherwise carrying on the business of MDB. The Company further acknowledges that from time to time MDB's independent research department may publish research reports or other materials, the substance and/or timing of which may conflict with the views or advice of MDB's investment banking department and/or which may have an adverse effect on the Company's interests in connection with the transactions contemplated hereby or otherwise. In addition, the Company acknowledges that, in the ordinary course of business, MDB may trade the securities of the Company for its own account and for the accounts of its customers, and may at any time hold a long or short position in such securities. MDB shall nonetheless remain fully responsible for compliance with federal securities laws in connection with such activities.

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The Company further acknowledges and agrees that MDB will act solely as an independent contractor hereunder, and that MDB's responsibility to the Company is solely contractual in nature and that MDB does not owe the Company or any other person or entity, including but not limited to its shareholders, any fiduciary or similar duty as a result of the Engagement or otherwise.

10. Notice. All notices, demands, and other communications to given pursuant to this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery using a nationally recognized courier service, sent by facsimile transmission, or emailed. Notice shall be deemed received: (a) if personally delivered, upon the date of delivery to the address of the receiving party; (b) if sent by overnight courier, the date actually received by the recipient; (c) if sent by facsimile or email, when sent. The parties will each promptly notify the other of any changes to the following contact information.

Notices to MDB shall be sent to:

MDB Capital Group, LLC  
Attn: Anthony DiGiandomenico  
401 Wilshire Blvd., Suite 1020  
Santa Monica, California 90401  
Fax: (310) 526-5020  
Email: d@mdb.com

Notices to the Company shall be sent to:

DvineWave Inc.  
207 Veritas Court  
San Ramon, CA 94582  
Attn: Michael Leabman

With a copy to Company counsel at:

Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, IL 60606  
Reference #10484

11. Complete Agreement; Amendments; Assignment. This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes and cancels any prior communications, understandings and agreements, whether oral or written, between MDB and the Company. This Agreement may not be amended or modified except in writing. The rights of MDB hereunder shall be freely assignable to any affiliate of MDB, and this Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties and their respective successors and assigns.

12. Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and, with the exception of the rights and benefits conferred upon the Indemnified Parties by Section 6 of this Agreement, shall not be deemed or interpreted to confer any rights upon any third parties.

13. Governing Law; Jurisdiction; Venue. All aspects of the relationship created by this Agreement shall be governed by and construed in accordance with the laws of the State of California, applicable to contracts made and to be performed in California, without regard to its conflicts of laws provisions. All actions and proceedings which are not submitted to arbitration pursuant to Section 14 hereof shall be heard and determined exclusively in the state and federal courts located in the County of Los Angeles, State of California, and the Company and MDB hereby submit to the jurisdiction of such courts and irrevocably waive any defense or objection to such forum, on forum non conveniens grounds or otherwise. The parties agree to accept service of process by mail, to their principal business address, addressed to the chief executive officer and secretary thereof. The parties hereby agree that this Section 13 shall survive the termination and/or expiration of this Agreement. Each of the Company and MDB will use commercially reasonable efforts to cooperate in connection with a reasonable request of the other to provide information to facilitate compliance with applicable law and regulation in connection with their respective performance under this Agreement.

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14. **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before one arbitrator in Los Angeles (with the exception of claims to enforce the indemnity provision contained herein, which may, at the option of the party seeking relief, be submitted either to arbitration or to any court of competent jurisdiction). The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, unless the parties are required to arbitrate by FINRA Rule 12200 subsection (2), in which event the matter shall be submitted to FINRA Dispute Resolution pursuant to its Code of Arbitration Procedure for Customer Disputes. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

The parties hereby agree that this Section 14 shall survive the termination and/or expiration of this Agreement.

The Company's and MDB's consent to Arbitration are confirmed by initialing below:

\_\_\_\_\_  
Company

\_\_\_\_\_  
MDB

15. **Severability.** Should any one or more covenants, restrictions and provisions contained in this Agreement be held for any reason to be void, invalid or unenforceable, in whole or in part, such unenforceability will not affect the validity of any other term of this Agreement, and the invalid provision will be binding to the fullest extent permitted by law and will be deemed amended and construed so as to meet this intent. To the extent any provision cannot be so amended or construed as a matter of law, the validity of the remaining provisions shall be deemed unaffected and the illegal or invalid provision will be deemed stricken from this Agreement.

16. **Section Headings.** The section headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

17. **Accounting.** Any calculation, computation or accounting that may be required under this Agreement shall be made in accordance and conformity with the Generally Accepted Accounting Principles and other standards as determined by the Financial Accounting Standards board and regulatory agencies with appropriate jurisdiction.

18. **Counterparts.** This Agreement may be executed via facsimile transmission and may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument.

19. **Patriot Act.** MDB hereby notifies the Company that pursuant to the requirements of the USA PATRIOT ACT (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Company in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

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MDB Engagement Letter

January 23, 2013

p. 8 of 13

If the above accords with your understanding and agreement, kindly indicate your consent hereto by signing below. We look forward to a long and successful relationship with you.

Very truly yours,

MDB CAPITAL GROUP LLC

/s/ Anthony DiGiandomenico

By: Anthony DiGiandomenico, Partner  
Head of Investment Banking

ACCEPTED AND AGREED TO  
AS OF THE DATE FIRST ABOVE WRITTEN:

DvineWave Inc.

/s/ Michael Leabman

By: Michael Leabman  
President

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MDB Capital Group, LLC  
401 Wilshire Boulevard  
Santa Monica, California 90401

Ladies and Gentlemen:

This agreement is being delivered to you in connection with the proposed Underwriting Agreement (the "Underwriting Agreement") between DvineWave, Inc., a Delaware corporation (the "Company"), and MDB Capital Group, LLC ("MDB") relating to a proposed underwritten public offering of shares (the "Shares") of the Company's Common Stock (the "Common Stock").

In order to induce MDB to enter into the Underwriting Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees that, during the period beginning on and including the date of the Underwriting Agreement through and including the one year anniversary of the date of the Underwriting Agreement (the "Lock-Up Period"), the undersigned, or any affiliated party of the undersigned, will not, without the prior written consent of MDB, directly or indirectly:

- (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition, or
- (ii) enter into any swap or other agreement, arrangement or transaction that transfers to another, in whole or in part, directly or indirectly, any of the economic consequence of ownership of any Common Stock or any securities convertible into or exercisable or exchangeable for any Common Stock,

whether any transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock, other securities, in cash or otherwise. Moreover, if:

- (1) during the last 17 days of the Lock-Up Period, the Company issues an earnings release or material news or a material event relating to the Company occurs, or
- (2) prior to the expiration of the Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the Lock-Up Period,

the Lock-Up Period shall be extended and the restrictions imposed by this agreement shall continue to apply until the expiration of the 18-day period beginning on the date of issuance of the earnings release or the occurrence of the material news or material event, as the case may be, unless MDB waives, in writing, such extension.

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Notwithstanding the provisions set forth in the immediately preceding paragraph, the undersigned may, without the prior written consent of MDB, (1) transfer any Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock as a bona fide gift or gifts, or by will or intestacy, to any member of the immediate family (as defined below) of the undersigned or to a trust the beneficiaries of which are exclusively the undersigned or members of the undersigned's immediate family or to a charity or educational institution; provided, however, that it shall be a condition to the transfer that (A) the transferee executes and delivers to MDB not later than one business day prior to such transfer, a written agreement, in substantially the form of this agreement and otherwise satisfactory in form and substance to MDB, and (B) if the undersigned is required to file a report under Section 16(a) of the Securities Exchange Act of 1934, as amended, reporting a reduction in beneficial ownership of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock by the undersigned during the Lock-Up Period (as the same may be extended as described above), the undersigned shall include a statement in such report to the effect that such transfer or distribution is not a transfer for value and that such transfer is being made as a gift or by will or intestacy, as the case may be or (2) exercise or convert currently outstanding warrants, options and convertible debentures, as applicable, and exercise options under an acceptable stock option plan, so long as the undersigned agrees that the shares of Common Stock received from any such exercise or conversion will be subject to this agreement. For purposes of this paragraph, "immediate family" shall mean a spouse, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister of the undersigned.

The undersigned further agrees that (i) it will not, during the Lock-Up Period (as the same may be extended as described above), make any demand for or exercise any right with respect to the registration under the Securities Act of 1933, as amended (the "1933 Act"), of any Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, and (ii) the Company may, with respect to any Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock owned or held (of record or beneficially) by the undersigned, cause the transfer agent or other registrar to enter stop transfer instructions and implement stop transfer procedures with respect to such securities during the Lock-Up Period (as the same may be extended as described above).

In addition, the undersigned hereby waives any and all notice requirements and rights with respect to the registration of any securities pursuant to any agreement, instrument, understanding or otherwise, including any registration rights agreement or similar agreement, to which the undersigned is a party or under which the undersigned is entitled to any right or benefit and any tag-along rights or other similar rights to have any securities (debt or equity) included in the offering contemplated by the Underwriting Agreement or sold in connection with the sale of Common Stock pursuant to the Underwriting Agreement, provided that such waiver shall apply only to the public offering of Common Stock pursuant to the Underwriting Agreement and each registration statement filed under the 1933 Act in connection therewith.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this agreement and that this agreement has been duly executed and delivered by the undersigned and is a valid and binding agreement of the undersigned. This agreement and all authority herein conferred are irrevocable and shall survive the death or incapacity of the undersigned and shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

*[Signature Page Immediately Follows]*



IN WITNESS WHEREOF, the undersigned has executed and delivered this agreement as of the date first set forth above.

Yours very truly,

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Print Name: \_\_\_\_\_

*Signature Page — Letter to  
MDB Capital Group, LLC*

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## SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (this “**Agreement**”), dated as of May 16, 2013 (the “**Effective Date**”), is by and among DvineWave Inc., a Delaware corporation (the “**Company**”), and the investors listed on the Schedule of Buyers, attached hereto as **Exhibit A** (individually, a “**Buyer**” and collectively, the “**Buyers**”).

### RECITALS

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the “**1933 Act**”), and Rule 506 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under the 1933 Act.

B. The Company has authorized the issuance of senior secured convertible notes in the aggregate original principal amount of up to \$5,500,000, subject to further increase in the discretion of the Company, in the form attached hereto as **Exhibit B** (the “**Notes**”), which Notes shall be convertible into shares of Common Stock (as defined in the Notes) (as converted, collectively, the “**Conversion Shares**”), in accordance with the terms of the Notes.

C. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the aggregate original principal amount of the Notes set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers.

D. At the Closing, the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit C** (the “**Registration Rights Agreement**”), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. In connection with the Offering, the Company, together with MDB Capital Group LLC, as the placement agent, (the “**Placement Agent**”) have entered into an escrow agreement, in the form attached hereto as **Exhibit D** (the “**Escrow Agreement**”), with U.S. Bank National Association (the “**Escrow Agent**”), to hold the Purchase Price (as hereinafter defined), to be released at the Closing to the Company, upon the written consent of the Company and MDB Capital Group.

F. The Notes and the Conversion Shares are collectively referred to herein as the “**Securities.**”

G. The Notes will be secured by a first priority perfected security interest in all the assets of the Company as evidenced by a security agreement as the Buyers shall require in form and substance acceptable to each Buyer (the “**Security Agreement**” attached hereto as **Exhibit E** and together with the other security documents and agreements entered into in connection with this Agreement and each of such other documents and agreements, as each may be amended or modified from time to time, collectively, the “**Security Documents**”).

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## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

### 1. **PURCHASE AND SALE OF NOTES AND WARRANTS.**

(a) Notes. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, shall purchase from the Company on the Closing Date (as defined below), a Note in the original principal amount as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers.

(b) Closing. In the discretion of the Company, one or more closings (each a "**Closing**") of the purchase of the Notes by the Buyers shall occur on a Business Day at the offices of Much Shelist, P.C., 191 N. Wacker Drive, Suite 1800, Chicago, IL 60606. The date and time of the initial Closing (the "**Closing Date**" of the initial Closing) shall be 10:00 a.m., New York time on a date selected by the Company after which the conditions referenced below have been satisfied or waived. The Company may hold additional Closings, from time to time, but not later than 30 days after the Closing Date of the initial Closing (the date of any such additional Closing, likewise selected by the Company, its respective "**Closing Date**"). At the Closing Date of the initial Closing, and at any subsequent Closing, the Closing with respect to the subscriptions for the Notes then being accepted by the Company will be subject to the satisfaction or waiver of the conditions set forth in Sections 6 and 7 below, as applicable to the Notes being purchased. The Company shall be permitted to amend this Agreement and the Security Documents without the consent of any other Party hereto to add Buyers in connection with Closings that occur after the initial Closing. As used herein "**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

(c) Purchase Price; Payment of Purchase Price. The aggregate purchase price for the Note to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (4) on the Schedule of Buyers. Upon delivery of this Agreement to the Company, with a copy to the placement agent, such Buyer shall pay its respective Purchase Price to the Escrow Agent, for the Note being purchased by such Buyer, by wire transfer of immediately available funds or bank check or personal check subject to collection. The payment of the Purchase Price by such Buyer will be held pursuant to the terms of the Escrow Agreement, once collected and in good funds with the Escrow Agent. If the offering of the Notes is terminated before a Closing or this Agreement is not accepted by the Company or otherwise terminated in whole or in part, the Purchase Price of such Buyer not being applied to the purchase of a Note will be returned to such Buyer, without cost or expense, including any interest earned thereon.

(d) Payment of Purchase Price; Delivery of Notes. On the Closing Date or any subsequent Closings, against delivery by the Escrow Agent to the account of the Company of the Purchase Price for the Note being purchased by each Buyer participating in the applicable Closing, the Company shall deliver to each Buyer a Note (in such amount as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers), in all cases, duly executed on behalf of the Company and registered in the name of such Buyer or its designee, together with the other deliveries set forth herein.

## 2. **BUYER'S REPRESENTATIONS AND WARRANTIES.**

Each Buyer represents and warrants to the Company with respect to only itself that as of the Closing Date(s) of the Closing(s) in which such Buyer participates:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Note, and (ii) upon conversion of its Note will acquire the Conversion Shares issuable upon conversion thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws.

(c) Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

(d) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(e) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(f) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Transfer or Resale. Such Buyer understands that except as provided in the Registration Rights Agreement or Section 4(h) or Section 4(u) hereof: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company (if requested by the Company) an opinion of counsel to such Buyer, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance and documentation as may be requested by the Company or its legal counsel that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person (as defined below) through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(h) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Buyer and constitutes the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the consummation by such Buyer of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Buyer, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(j) Buyer's Principal Residence. The address of Buyer's principal residence, if Buyer is a natural Person or if Buyer is a non-natural Person, such as a corporation, limited liability company or other entity, is set forth in column (2) of the Schedule of Buyers.

(k) No Engagements. Such Buyer has not engaged any brokers, finders or agents, and the Company has not, nor will, incur, directly or indirectly, as a result of any action taken by such Buyer, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the transactions consummated under this Agreement. Neither such Buyer, nor any of Buyer's officers, directors, employees, agents, stockholders or partners has either directly or indirectly, including through a broker or finder: (i) engaged in or received any general solicitation or (ii) published or received any advertisement in connection with the offer or sale of the Securities.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants, as of the applicable Closing Date, unless with respect to a particular representation or warranty another date is provided, to each of the Buyers that, except as provided in the Disclosure Letter, attached hereto as Exhibit F:

(a) Organization and Qualification. The Company is an entity duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed, and has the requisite power and authorization to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. The Company is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not be reasonably expected to have a Material Adverse Effect. "Material Adverse Effect" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof) or condition (financial or otherwise) of the Company, either individually or taken as a whole, (ii) the ability to consummate transactions contemplated to be consummated on such Closing Date hereunder or under any of the other Transaction Documents with a Buyer participating in the Closing on such Closing Date or (iii) the authority or ability of the Company to perform any of its obligations under any of the Transaction Documents (as defined below). The Company has no Subsidiaries. "Subsidiaries" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "Subsidiary." Additionally, to the extent that any Subsidiary is hereafter created, and the context of the provision of this Agreement would ordinarily include a Subsidiary, then the term "Company" will be deemed to include such Subsidiary.

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Notes) have been duly authorized by the Company's board of directors or other governing body, as applicable, and (other than the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies) no further filing, consent or authorization is required by the Company, its respective boards of directors or the stockholders or other governing body. This Agreement has been, and the other Transaction Documents will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "Transaction Documents" means, collectively, this Agreement, the Notes, the Security Documents, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined in the Registration Rights Agreement), the Subordination Agreement (as defined below) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the consummation of the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Conversion Shares. The Conversion Shares, when issued in accordance with the terms of the Notes, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof under the terms thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. The Company shall have reserved from its duly authorized capital stock not less than one hundred one percent (101%) of the sum of the maximum number of Conversion Shares issuable upon conversion of the Notes in accordance with their terms. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes, the Conversion Shares upon conversion of the Notes, the reservation for issuance of the Conversion Shares and the creation of the security interests represented by the Security Documents) will not (i) result in a violation of the Certificate of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein) or other organizational documents of the Company, any capital stock of the Company or Bylaws (as defined below) of the Company, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of any stock exchange or trading medium (the "Principal Market")) applicable to the Company or by which any property or asset of the Company is bound or affected except, in the case of clause (ii) or (iii) above, to the extent such violations that could not reasonably be expected to have a Material Adverse Effect.

(e) Consents. The Company is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under, or contemplated by, the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain at or prior to the Closing have been obtained or made on or prior to the Closing Date, and the Company is not aware of any facts or circumstances which might prevent the Company from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents, including without limitation the requirements of the Principal Market.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company, (ii) an "affiliate" (as defined in Rule 144) of the Company or (iii) to its knowledge, a "beneficial owner" of more than ten percent (10%) of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities and Exchange Act of 1934 Act, as amended ("1934 Act")). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company and its respective representatives.

(g) No General Solicitation; Placement Agent's Fees. Except as set forth in Schedule 3(g) attached to the Disclosure Letter, neither the Company nor any Person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any Placement Agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby. Other than MDB Capital Group, LLC (i.e., the "Placement Agent") to which a cash fee of ten percent (10%) of the gross proceeds of any Closing hereunder and a warrant based on ten percent (10%) of the initial principal amount of the Notes issued at any Closing hereunder, the Company has not engaged any placement agent or other broker or dealer in connection with the offer or sale of the Securities.



(h) No Integrated Offering. None of the Company or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company (other than any required approval of holders of a majority of the outstanding common stock of the Company received before the Closing) under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, nor its affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares may increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares upon conversion of the Notes in accordance with this Agreement and the Notes is absolute and unconditional, regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the consummation of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company.

(k) Placement Documents; Financial Statements. The private placement memorandum provided to the Buyers in connection with the sale of the Notes, at the time of the date thereon, as it may be amended from time to time, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the private placement memorandum are unaudited and were not prepared in accordance with generally accepted accounting principles, but fairly represented the financial position and results of the Company as of at and for the periods ended on the dates of such financial statements. No other information provided by or on behalf of the Company to any of the Buyers taken together with such private placement memorandum contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made.

(l) Absence of Certain Changes. Since the date of the Company's most recent financial statements contained in the private placement memorandum provided to the Buyer in connection with the sale of the Notes, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company. Since the date of the Company's most recent financial statements contained in the private placement memorandum provided to the Buyer in connection with the sale of the Notes, the Company has not (i) declared or paid any dividends (whether by cash, property or securities), (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. The Company has not taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company is not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). "Insolvent" means (i) the present fair saleable value of the Company's assets is less than the amount required to pay the Company's total Indebtedness (as defined below), (ii) the Company is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (iii) the Company intends to incur or believe that they will incur debts that would be beyond its ability to pay as such debts mature. The Company has not engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's remaining assets constitute unreasonably small capital.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. The Company has no knowledge of any event, liability, development or circumstance that has occurred or exists, or that is reasonably expected to occur or exist with respect to the Company or any of its business, properties, liabilities, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced or disclosed to the Buyers, (ii) could have a material adverse effect on any Buyer's investment hereunder or (iii) could have a Material Adverse Effect.

(n) Conduct of Business; Regulatory Permits. The Company is not in violation of any term of or in default under its Certificate of Incorporation or Bylaws. The Company is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company, and the Company will not conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. The Company possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and the Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) Foreign Corrupt Practices. The Company and none of its directors, officers, agents, employees or other Persons acting on behalf of the Company has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(p) Sarbanes-Oxley Act. The Company is in compliance with all applicable requirements of the Sarbanes-Oxley Act of 2002 and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as set forth on Schedule 3(q) attached to the Disclosure Letter and in the private placement documents provided to the Buyers in connection with the sale of the Notes, none of the officers, directors, employees or affiliates of the Company is presently a party to any transaction with the Company (other than for ordinary course services as employees, officers or directors and immaterial transactions), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director, employee or affiliate or, to the knowledge of the Company, any corporation, partnership, trust or other Person in which any such officer, director, employee or affiliate has a substantial interest or is an employee, officer, director, trustee or partner.

(r) Equity Capitalization. Except as set forth in Schedule 3(r) attached to the Disclosure Letter:

As of the Effective Date, the authorized capital stock of the Company will consist solely of shares of Common Stock, of which are issued and outstanding and shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes). No approval of the shareholders is required for the issuance of the Notes or the Conversion Shares or any of the Convertible Securities. No shares of Common Stock are held in treasury. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and non-assessable. Shares of the Company's issued and outstanding Common Stock on the date hereof are owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least ten percent (10%) of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company. To the Company's knowledge, no Person owns ten percent (10%) or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein) without conceding in the private placement documentation that such identified Person is a ten percent (10%) stockholder for purposes of federal securities laws. Except as contemplated by the Transaction Documents, as of immediately prior to the Closing, (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company (except pursuant to an agreement to issue common stock in connection with patent and intellectual property services); (iii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or by which the Company is or may become bound; (iv) there are no financing statements securing obligations in any amounts filed in connection with the Company; (v) there are no agreements or arrangements under which the Company is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the Registration Rights Agreement and warrants issued to MDB Capital Group LLC or its affiliates); (vi) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (viii) the Company has not issued any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The Company has furnished to the Buyers true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "Certificate of Incorporation"), and the Company's bylaws, as amended and as in effect on the date hereof (the "Bylaws"), and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto. "Convertible Securities" means preferred stock, options, warrants or other securities directly or indirectly convertible into, exchangeable for or exercisable for Common Stock of the Company.

(s) Indebtedness and Other Contracts. The Company (i) except as disclosed on Schedule 3(s)(i) attached to the Disclosure Letter, has no outstanding Indebtedness (as defined below), (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. (x) "Indebtedness" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with generally accepted accounting principles) (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) "Contingent Obligation" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(t) Absence of Litigation. Except as set forth on Schedule 3(t) attached to the Disclosure Letter, there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company, the Common Stock or any of the Company's officers or directors which is outside of the ordinary course of business or individually or in the aggregate material to the Company. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC or other United States governmental agency involving the Company or any current or former director or officer of the Company.

(u) Insurance. Except as set forth in Schedule 3(u) attached to the Disclosure Letter, the Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company is engaged. The Company has not been refused any insurance coverage sought or applied for, and the Company has no any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. The Company is not a party to any collective bargaining agreement or employs any member of a union. The Company believes that its relations with their respective employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. To the Company's knowledge, no executive officer or other key employee of the Company is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company to any liability with respect to any of the foregoing matters. The Company is in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title. The Company has good and marketable title in fee simple to all real property, and have good and marketable title to all personal property, owned by them which is material to the business of the Company, in each case, free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company. Any real property and facilities held under lease by the Company is held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company.

(x) Intellectual Property Rights. To the Company's knowledge, the Company owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("Intellectual Property Rights") necessary to conduct its business as now conducted and as presently proposed to be conducted. None of the Company's Intellectual Property Rights have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within three years from the date of this Agreement. The Company has no knowledge of any infringement by the Company of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company, being threatened, against the Company regarding their Intellectual Property Rights. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of its Intellectual Property Rights.

(y) Environmental Laws. The Company (i) is in compliance with all Environmental Laws (as defined below), (ii) has received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct its business, and (iii) is in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. "Environmental Laws" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(z) Tax Status. The Company (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the U.S. Internal Revenue Code of 1986, as amended.

(aa) Internal Accounting and Disclosure Controls. Given the limited resources of the Company as a development-stage business, the Company uses good faith efforts to maintain internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company has not received any notice or correspondence from any accountant or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company.

(bb) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship involving the Company in respect of an off balance sheet entity that would be required to be disclosed by the Company in a 1934 Act filing or that otherwise could be reasonably likely to have a Material Adverse Effect.

(cc) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," or, to the knowledge of the Company, an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(dd) U.S. Real Property Holding Corporation. The Company is not, and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon any Buyer's request.

(ee) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(ff) Bank Holding Company Act. The Company is not subject to the Bank Holding Company Act of 1956, as amended (the “**BHCA**”) and to regulation by the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”). The Company nor any of its affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any equity that is subject to the BHCA and to regulation by the Federal Reserve. The Company nor any of its affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(gg) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i).

(hh) Public Utility Holding Act. The Company is not a “holding company,” or an “affiliate” of a “holding company,” as such terms are defined in the Public Utility Holding Act of 2005.

(ii) Federal Power Act. The Company is not subject to regulation as a “public utility” under the Federal Power Act, as amended.

(jj) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(kk) Real Property. The Company holds good title to all real property, leases in real property, or other interests in real property stated as owned or held by the Company (the “**Real Property**”). The Real Property is free and clear of all mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively “**Encumbrances**”) and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (i) liens for current taxes not yet due, and (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

(ll) Fixtures and Equipment. The Company has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company in connection with the conduct of its business (the “**Fixtures and Equipment**”). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company’s business in the manner as conducted prior to the Closing. The Company owns all of its Fixtures and Equipment free and clear of all Encumbrances except for (i) liens for current taxes not yet due, and (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.



(mm) Illegal or Unauthorized Payments; Political Contributions. The Company nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any other business entity or enterprise with which the Company is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company.

(nn) Money Laundering. The Company is in compliance with, and has not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, without limitation, (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(oo) Ranking of Notes. No Indebtedness of the Company, at the Closing, will be senior to, or *pari passu* with, the Notes in right of payment, whether with respect to payment or redemptions, interest, damages, upon liquidation or dissolution or otherwise.

(pp) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting the transactions consummated hereunder. All disclosure provided to the Buyers regarding the Company, its business and the transactions contemplated hereby, including the private placement memorandum, the Disclosure Letter and the schedules to this Agreement, furnished by or on behalf of the Company does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

#### **4. COVENANTS.**

(a) Best Efforts. Each Buyer shall use its best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Form D and Blue Sky. The Company shall file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to each Buyer promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required in connection with the consummation of the transactions consummated hereunder under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable “Blue Sky” laws), and the Company shall comply with all applicable federal, foreign, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. After the date the Company becomes a Reporting Company, if applicable, and until the date on which the Buyers shall have sold all of the Registrable Securities (such period, to end in any event, whether or not such securities have been sold, not later than five years after such date, the “**Reporting Period**”), the Company shall use commercially reasonable efforts to timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination unless such termination is approved by the holders of a majority stockholders of the voting power of the Company, or unless no Buyer has demand registration rights under the Registration Rights Agreement or unless no Buyer is a holder of record of Conversion Shares (collectively, the “**Termination Conditions**”).

(d) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities for general corporate purposes or as expressly set forth on Schedule 4(d) attached to the Disclosure Letter. Without limiting the foregoing, except as expressly set forth on Schedule 4(d) attached to the Disclosure Letter, none of such proceeds shall be used, directly or indirectly, (i) for the satisfaction of any debt of the Company, (ii) for the redemption of any securities of the Company (other than the Securities) or (iii) with respect to any litigation involving the Company (including, without limitation, any settlement thereof).

(e) Financial Information. The Company agrees to send the following to each Buyer after the date hereof and including during the Reporting Period for so long as such Buyer is a holder of record of the Company’s common stock (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any balance sheets, income statements, stockholders’ equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) on the same day as the release thereof, facsimile copies of all press releases issued by the Company unless filed with the SEC through EDGAR as an exhibit to Form 8-K or another applicable form and available to the public through EDGAR, and (iii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(f) Listing. In connection with the Company becoming an issuer subject to the reporting requirements of the 1934 Act, if applicable, the Company shall in connection with any proper demand for registration of Registrable Securities under the Registration Rights Agreement (if the same has not previously occurred) promptly secure the listing or designation for quotation (as the case may be) of all of the Registrable Securities upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall thereafter maintain such listing or designation for quotation (as the case may be) of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system unless one of the Termination Conditions has occurred. During any period that the Common Stock is listed or designated, the Company shall use commercially reasonable efforts to maintain the Common Stock's listing or designation for quotation (as the case may be) on the Principal Market, The New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market (each, an "**Eligible Market**"). During the Reporting Period, the Company shall use commercially reasonable efforts not to take any action which could be reasonably expected to prevent a listing or result in the delisting or suspension of the Common Stock from an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby and resulting from the retention by the Company of any placement agent, financial advisor or broker (including, without limitation, any fees payable to the Placement Agent, who is the Company's sole placement agent in connection with the transactions contemplated by this Agreement). Except where Buyer has breached Section 2(k) hereof, the Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Buyer in connection with a bona fide margin agreement or other bona fide loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer making a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees to execute and deliver such documentation as a holder of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(i) Reservation of Shares. The Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than one hundred one percent (101%) of the maximum number of Conversion Shares issuable upon conversion of the Notes.

(j) Conduct of Business. So long as any of the Securities are held by the Buyers and their successors in interest and assigns, the business of the Company shall not be conducted in violation of any law, ordinance or regulation of any governmental entity, except where such violations would not result, either individually or in the aggregate, in a Material Adverse Effect.

(k) Variable Rate Transaction. Until the later of none of the Notes being outstanding or three years after the Company shall become an issuer reporting under the 1934 Act, the Company shall be prohibited from effecting or entering into an agreement to effect any offering or placement of equity or equity linked securities or debt of the Company (“**Subsequent Placement**”) involving a Variable Rate Transaction. “**Variable Rate Transaction**” means a transaction in which the Company (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of, or quotations for, the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary “weighted average” anti-dilution provision or (ii) enters into any agreement (including, without limitation, an “equity line of credit” or an “at the market offering”) whereby the Company may sell securities at a future determined price (other than standard and customary “preemptive” or “participation” rights). Each Buyer shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(l) Participation Right. So long as the Notes are outstanding the Company, directly or indirectly, shall not effect any Subsequent Placement, other than a publicly underwritten firm commitment offering through a registered broker-dealer, unless the Company shall have first complied with this Section 4(l). The Company acknowledges and agrees that the right set forth in this Section 4(l) is a right granted by the Company, separately, to each Buyer.

(i) At least five (5) Business Days prior to any proposed or intended Subsequent Placement, the Company shall deliver to each Buyer a written notice of its proposal or intention to effect a Subsequent Placement (each such notice, a “Pre-Notice”), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: (i) a statement that the Company proposes or intends to effect a Subsequent Placement, (ii) a statement that the statement in clause (i) above does not constitute material, non-public information and (iii) a statement informing such Buyer that it is entitled to receive an Offer Notice (as defined below) with respect to such Subsequent Placement upon its written request. Upon the written request of a Buyer within three (3) Business days after the Company’s delivery to such Buyer of such Pre-Notice, the Company shall promptly, but no later than one (1) Business day after such request, deliver to such Buyer an irrevocable written notice (the “Offer Notice”) of any proposed or intended issuance or sale or exchange (the “Offer”) of the securities being offered (the “Offered Securities”) in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Buyer in accordance with the terms of the Offer one hundred percent (100%) of the Offered Securities that such Buyer is eligible to subscribe for, provided that the number of Offered Securities which such Buyer shall have the right to subscribe for under this Section 4(l) for and the consideration to be paid for the Offered Securities shall be (a) based on such Buyer’s pro rata portion of the aggregate original principal amount of the Notes purchased hereunder by all Buyers (the “Basic Amount”), and (b) with respect to each Buyer that elects to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other Buyers as such Buyer shall indicate it will purchase or acquire should the other Buyers subscribe for less than their Basic Amounts allocated among other Buyers who elect to purchase their respective Basic Amounts as specified in Subsection (ii) below (the “Undersubscription Amount”); and provided further, if such Buyer elects to use as the consideration for the Offered Securities the principal due on the Notes, then the number of Offered Securities which such Buyer shall have the right to subscribe for under this Section 4(l) shall be one-half of such Buyer’s pro rata portion of the Basic Amount and with respect to each Buyer that elects to purchase the reduced Basic Amount, any additional portion of the Offered Securities attributable to one-half of the Undersubscription Amount.

(ii) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to the Company prior to the end of the fifth (5th) Business Day after such Buyer’s receipt of the Offer Notice (the “Offer Period”), setting forth the portion of such Buyer’s Basic Amount that such Buyer elects to purchase and, if such Buyer shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such Buyer has an interest in purchasing and will purchase, if allocated as the Available Undersubscription Amount (hereinafter defined) for such Buyer (in either case, the “Notice of Acceptance”). If the Basic Amounts subscribed for by all Buyers are less than the total of all of the Basic Amounts, then such Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the “Available Undersubscription Amount”), such Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Buyer bears to the total Basic Amounts of all Buyers that have subscribed for Undersubscription Amounts, subject to rounding by the Company to the extent it deems reasonably necessary. Notwithstanding the foregoing, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to each Buyer a new Offer Notice and the Offer Period shall expire on the fifth (5th) Business Day after such Buyer’s receipt of such new Offer Notice; provided however, if the Buyers use any portion of the principal of their Notes to purchase the Offered Securities, then the Offer may be increased by such amount and there is no requirement that the Company deliver a new Offer Notice or extend the Offer Period.

(iii) If the Company is an issuer subject to the periodic reporting requirements under Sections 13 or 15(d) of the 1934 Act, as amended from time to time, together with the regulations promulgated thereunder (a “Reporting Company”), the Company shall have five (5) days and shall otherwise have fifteen (15) days from the expiration of the Offer Period above (i) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by a Buyer (the “Refused Securities”) pursuant to a definitive agreement(s) (the “Subsequent Placement Agreement”), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (ii) to publicly announce (a) the execution of such Subsequent Placement Agreement, and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto, provided that Clause (ii) of this Subsection (iii) shall not apply to the Company unless it is a Reporting Company.

(iv) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(l)(iii) above), then such Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer elected to purchase pursuant to Section 4(l)(ii) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Buyers pursuant to this Section 4(l)) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with Section 4(l)(i) above.

(v) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, such Buyer shall acquire from the Company, and the Company shall issue to such Buyer, the number or amount of Offered Securities specified in its Notice of Acceptance. The purchase by such Buyer of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and such Buyer of a separate purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to such Buyer and its counsel.

(vi) Any Offered Securities not acquired by a Buyer or other Persons in accordance with this Section 4(l) may not be issued, sold or exchanged until they are again offered to such Buyer under the procedures specified in this Agreement.

(vii) The Company and each Buyer agree that if any Buyer elects to participate in the Offer, neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto (collectively, the "Subsequent Placement Documents") shall include any term or provision whereby such Buyer shall be required to agree to any restrictions on trading as to any securities of the Company inconsistent with the restrictions in this Agreement or be required to consent to any amendment to or termination of, or grant any waiver or release or the like under or in connection with, any agreement previously entered into with the Company or any instrument received from the Company.

(viii) If the Company is a Reporting Company, notwithstanding anything to the contrary in this Section 4(l) and unless otherwise agreed to by such Buyer, the Company shall either confirm in writing to such Buyer that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case, in such a manner such that such Buyer will not be in possession of any material, non-public information, by the fifth (5th) Business Day following delivery of the Offer Notice; if by such fifth (5th) Business Day, no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by such Buyer, such transaction shall be deemed to have been abandoned and such Buyer shall not be in possession of any material, non-public information with respect to the Company. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide such Buyer with another Offer Notice in accordance with, and subject to, the terms of this Section 4(l) and such Buyer will again have the right of participation set forth in this Section 4(l). The Company shall not be permitted to deliver more than one Offer Notice to such Buyer in any sixty (60) day period, except as expressly contemplated by the last sentence of Section 4(l)(ii).

(ix) The restrictions contained in this Section 4(l) shall not apply in connection with the issuance of unregistered shares of Common Stock to an employee or consultant or director under an equity incentive plan approved by the Board or to a Person who enters into a bona fide strategic alliance with the Company but only if such Person (I) is, itself or through its subsidiaries, an operating company (which, for clarification purposes, does not include a Person in the business of making investments in, or providing capital to, other Persons) in a business synergistic with the business of the Company and (II) actually provides strategic operational benefits to the Company, provided that all such issuances after the date hereof pursuant to this Subparagraph (ix) do not, in the aggregate, exceed more than fifty percent (50%) of the shares of Common Stock (adjusted for stock splits, stock combinations and other similar transactions occurring after the date of this Agreement) that may be issued on conversion of the Notes as of the date of this Agreement. The Company shall not circumvent the provisions of this Section 4(l) by providing terms or conditions to one Buyer that are not provided to all Buyers.

(m) Passive Foreign Investment Company. For the period ending on the third year anniversary after the Company becomes an issuer subject to the reporting requirements of the 1934 Act, the Company shall conduct its business in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the U.S. Internal Revenue Code of 1986, as amended.

(n) Restriction on Redemption and Cash Dividends. So long as any Notes are outstanding, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Required Buyers.

(o) Corporate Existence. So long as any Notes are outstanding, the Company shall not be party to any Fundamental Transaction (as defined in the Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes.

(p) Board of Directors; Size. So long as any Notes are outstanding, (i) the Company will have a board of directors consisting of five members, of which three will be independent directors who will be mutually acceptable to the Company and MDB Capital Group LLC; (ii) subject to any legal rights under Delaware law of the shareholders, the number of members who shall constitute the board of directors of the Company, may be changed only with the approval of MDB Capital Group LLC, which approval may be withheld in its discretion and subject to reasonable conditions, including the requirement of additional independent directors. Notwithstanding anything to the contrary in this Agreement, without limiting the ability of the parties hereto to amend this Agreement under Section 9(e), Section 4(p) of this Agreement may be amended, waived or terminated with the written consent of the Company and the Placement Agent, and without the consent of any Buyer, and any amendment, waiver or termination of any provision of this Agreement made in conformity with the provisions of this Section 4(p) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such amendment, waiver or termination shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion).



(q) Intellectual Property Strategy. Within three months after the initial issuance of the Notes, the Company will adopt an intellectual property strategy reasonably acceptable to MDB Capital Group LLC, and provide a detailed written statement of the strategy to the Buyers.

(r) Incentive Equity. The Company may adopt an incentive stock or equity award plan, the terms of which are reasonably acceptable to MDB Capital Group LLC, which plan provides for awards of shares equal to no more than twenty percent (20%) of the number of fully diluted shares of Common Stock as of the date immediately after the issuance of the Notes and the warrants being issued to MDB Capital Group LLC. Any such plan will not be amended to increase the number of shares subject thereto until one (1) year after the Company becomes an issuer reporting under the 1934 Act, or upon the approval of MDB Capital Group LLC.

(s) Independent Accountants. Within three months after the date of initial issuance of the Notes, the Company will engage independent certified public accountants, which firm is actively registered with the PCAOB, to perform an audit of the financial statements that would be necessary and sufficient to meet the filing requirements of a registration statement for the registration of securities of the Company either for issuance by the Company or resale of the Conversion Shares, which audit will be completed no later than nine (9) months after the date of the initial issuance of the Notes.

(t) Lock Up. In connection with any initial public offering, the Company will use its best efforts to obtain lock-up agreements from all its officer, directors, and employees, from any direct or beneficial holders of five percent (5%) or more of the shares of Common Stock of the Company, and from MDB Capital Group LLC and any beneficial holders of shares of Common Stock who are affiliates of MDB Capital Group LLC in respect of shares of Common Stock issued under any agreement for the provision of patent and intellectual property services and issuable or issued upon exercise of any warrants issued in connection with the offering by the Company of the Notes (for clarity, the lock up will not apply to any other shares of Common Stock, including any shares of Common Stock acquired in the public markets); the foregoing lock up to extend for a period of 12 months after the effective date of the registration statement for such initial public offering. Additionally, each Buyer agrees to enter into any lock-up agreement reasonably and customarily requested by the underwriters of any initial public offering of the securities of the Company, which lock up provisions may be for a period of up to 180 days after the effective date of the registration statement for such initial public offering.

(u) Market Stand-Off. In connection with the initial public offering of the Company's securities, if any, and upon request of the managing or lead underwriter made to the Company in connection with such offering, each Buyer will agree with the Company and the underwriter not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration, if any) without the prior written consent of the managing or lead underwriter of such offering, for a period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting requirements binding on such Buyer that are substantially consistent with this Section 4 as may be requested by the underwriters at the time of the such offering; provided, however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16) day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 4 shall continue to apply until the end of the third (3<sup>rd</sup>) trading day following the expiration of the fifteen (15) day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond two hundred sixteen (216) days after the effective date of the registration statement. In order to enforce the restriction set forth above or any other restriction agreed by Buyer, including without limitation any restriction requested by the underwriters of any initial public offering of the securities of the Company agreed by such Buyer, the Company may impose stop-transfer instructions with respect to any security acquired under or subject to this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Section 4.

## 5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Notes and, if issued, the Conversion Shares in which the Company shall record the name and address of the Person in whose name the Notes and/or Conversion Shares have been issued (including the name and address of each transferee), the principal amount of the Notes or aggregate number of Conversion Shares held by such Person, and any tax related information required to be maintained. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives. After the Company appoints an independent transfer agent for its Common Stock, the requirements of this Section 5(a) as to the Conversion Shares will cease upon the transfer of the data regarding the Conversion Shares to such transfer agent.

(b) Transfer Agent Instructions. If a Buyer effects a sale, assignment or transfer of the Conversion Shares, the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts at the Depository Trust Company ("DTC") in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Conversion Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the transfer agent shall issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below. The Company acknowledges that a breach by it of its obligations under this Section 5(b) will cause irreparable harm to each Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that each Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company's transfer agent on each Effective Date (as defined and provided in the Registration Rights Agreement), provided that the applicable Buyer(s) or its or their representatives and/or brokers have provided the documentation to counsel reasonably necessary or required for the basis of such legal opinion. Any fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the “Blue Sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN]/[THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) while a registration statement (including a Registration Statement) covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (provided that a Buyer provides the Company with reasonable assurances that such Securities are eligible and will remain for sale, assignment or transfer under Rule 144 which shall not include an opinion of counsel), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Buyer provides the Company with an opinion of counsel to such Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made and thereafter made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC provided that Buyer provides the Company with a reasonable description of the authority Buyer is relying upon). If the Company is a Reporting Company and a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Business Days following the delivery by a Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be required above in this Section 5(d), as directed by such Buyer, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program and such Securities are Conversion Shares, credit the aggregate number of shares of Common Stock to which such Buyer shall be entitled to such Buyer's or its designee's balance account with the DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch for delivery (via reputable overnight courier) to such Buyer, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of such Buyer or its designee (the date by which such credit is so required to be made to the balance account of such Buyer's or such Buyer's nominee with DTC or such certificate is required to be delivered to such Buyer pursuant to the foregoing is referred to herein as the "**Required Delivery Date**").

(e) Failure to Timely Deliver; Buy-In. If the Company is a Reporting Company and the Company improperly fails to (i) issue and dispatch for delivery (or cause to be so dispatched) to a Buyer by the Required Delivery Date a certificate representing the Securities so delivered to the Company by such Buyer that is free from all restrictive and other legends or (ii) credit the balance account of such Buyer's or such Buyer's nominee with DTC for such number of Conversion Shares so delivered to the Company, and if on or after the business day immediately following the Required Delivery Date such Buyer (or any other Person in respect, or on behalf, of such Buyer) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Buyer of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that such Buyer so anticipated receiving from the Company without any restrictive legend, then, in addition to all other remedies available to such Buyer, the Company shall, within five (5) Business Days after such Buyer's request and in such Buyer's sole discretion, either (x) pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Buyer's balance account shall terminate and such shares shall be cancelled, or (y) promptly honor its obligation to so deliver to such Buyer a certificate or certificates or credit such Buyer's DTC account representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Conversion Shares that the Company was required to deliver to such Buyer by the Required Delivery Date multiplied by (B) the lowest closing sale price of the Common Stock on any Business Day during the period commencing on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the date of such delivery and payment under this clause (y).

**6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.**

(a) The obligation of the Company hereunder to issue and sell the Notes to each Buyer at any Closing in which such Buyer participates is subject to the satisfaction, at or before the applicable Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price for the Note being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(iii) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(iv) The Purchase Price for the Note being sold to such Buyer shall be held in collected and good funds by the Escrow Agent, all in accordance with proceedings and arrangements satisfactory to the Company in respect of the Escrow Agent's release of such funds in connection with the Closing in which such Buyer is participating.

(v) All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or any state that are required in connection with the lawful issuance of the Notes pursuant to this Agreement shall be obtained and effective as of the Closing.

(vi) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Such Buyer shall have delivered to the Company such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as the Company or its counsel may reasonably request, and the Company shall be satisfied with the documents and proceedings relating to the proposed investment by such Buyer.

**7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.**

(a) The obligation of each Buyer hereunder to purchase its Note at any Closing in which such Buyer participates is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer a Note (in such original principal amount as is set forth across from such Buyer's name in column (3) of the Schedule of Buyers) being purchased by such Buyer at the Closing pursuant to this Agreement.

(ii) Such Buyer shall have received an opinion of Much Shelist, P.C., the Company's counsel, dated the date of the issuance of the Note to such Buyer, stating that the Company is duly incorporated, the Transaction Documents have been duly authorized, and that the Conversion Shares, if and when issued will be duly authorized, fully paid and non-assessable, which opinion may be subject to such assumptions and conditions are normally set forth in opinions of legal counsel in respect of such matters.

(iii) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in each jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

(iv) The Company shall have delivered to such Buyer a certificate or other reasonably acceptable evidence evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company conducts business and is required to so qualify, as of a date within ten (10) days of the Closing Date.

(v) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation as certified by the Secretary of State of the Company's jurisdiction of incorporation within ten (10) days of the Closing Date.

(vi) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company as in effect at the Closing.

(vii) Each and every representation and warranty of the Company shall be true and correct as of the applicable Closing Date (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, executed by the President of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form reasonably acceptable to such Buyer.

(viii) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities.

(ix) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(x) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xi) In accordance with the terms of the Security Documents, the Company shall have delivered to such Buyer copies of appropriate financing statements on Form UCC-1 to be duly filed in such office or offices and in the offices of the United States Patent and Trademark Office as may be necessary or, in the opinion of the Buyers, desirable to perfect the security interests purported to be created by each Security Document.

(xii) Within two (2) Business Days prior to the Closing, the Company shall have delivered or caused to be delivered to each Buyer (i) true copies of UCC search results in the Company's jurisdiction of incorporation, listing all effective financing statements which name as debtor the Company filed in the prior five years to perfect an interest in any assets thereof, together with copies of such financing statements, none of which, except as otherwise agreed in writing by the Required Buyers, shall cover any of the Collateral (as defined in the Security Documents) and the results of searches for any tax lien and judgment lien in the jurisdiction of the Company's principal place of business filed against such Person or its property, which results, except as otherwise agreed to in writing by the Required Buyers shall not show any such Liens (as defined in the Security Documents); and (ii) a perfection certificate, duly completed and executed by the Company, in form and substance reasonably satisfactory to the Required Buyers.

(xiii) The Company shall not have amended, modified, waived compliance with or terminated, revoked or rescinded in any manner or respect (and the Company shall not have taken any action, or permitted any action to be taken (whether through the Company's inaction or otherwise), that has a similar effect to any of the foregoing) any provision of any of material agreements and all of such agreements shall be in full force and effect.

(xiv) The Company shall have delivered to such Buyer a letter dated as of the Closing Date, in a form reasonably acceptable to such Buyer, executed by the Company (the "Disclosure Letter"); and

(xv) The Company shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

## **8. TERMINATION.**

(a) In the event that the Closing shall not have occurred with respect to a Buyer within ten (10) days after the date of acceptance of the subscription represented by this Agreement hereof, or if later, within ten (10) days after such Buyer and the Company have exchanged signature pages to the Transaction Documents, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Notes shall be applicable only to such Buyer providing such written notice.

(b) This Agreement immediately will terminate if the Placement Agent and the Company give notice to the Escrow Agent of the termination of the Offering before the first Closing Date.

(c) This Agreement immediately will terminate as to all Buyers if the Company rejects in whole all subscriptions for Notes hereunder and will terminate as to any individual Buyer if the Company rejects in who the subscription for any Note by such Buyer, regardless of whether or not any or all of the respective Purchase Prices have been received by the Escrow Agent.

(d) No termination of this Agreement shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.



**9. MISCELLANEOUS.**

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company, or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as “interest” under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, and the Company and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of “interest” or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) **Entire Agreement; Amendments.** This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf solely with respect to the matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company prior to the date hereof with respect to any prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and any Buyer, or any instruments any Buyer received from the Company prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Buyers (as defined below), and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Buyers may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents who are holders of Notes. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (i) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (ii) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Buyers**", at any time all Notes are outstanding, means (i) Buyers having Purchase Prices in the aggregate that are at least equal to fifty percent (50%) of the aggregate Purchase Prices for all Buyers or, at any time some, but less than all of the Notes are outstanding means (ii) the Buyers then holding at least fifty percent (50%) of the then outstanding principal amount of all Notes outstanding, or, at any time no Notes are outstanding but Conversion Shares are outstanding (iii) means the Buyers then holding at least fifty percent (50%) of the then outstanding Conversion Shares, or at any other time shall have the meaning established in clause (i) of this definition. Without limiting the power of the Persons contemplated in this Section 9(e) to amend Section 4(p), such Section 4(p) may also be amended as provided therein.

(f) **Notices.** Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) when sent, if sent by e-mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient) and (iv) if sent by overnight courier service, one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Company:

DvineWave Inc.  
207 Veritas Ct.  
San Ramon, CA 94582  
E-mail: mleabman@dvinewave.com  
Attention: Michael Leabman, President

with a copy (for informational purposes only) to:

Much Shelist, P.C.  
191 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
Fax Number 312.521.2898  
E-mail: ggrove@muchshelist.com  
Attention: Gregory D. Grove, Esq.

If to a Buyer, to its address, facsimile number or e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Golenbock Eiseman Assor Bell & Peskoe LLP  
437 Madison Avenue, 40<sup>th</sup> Floor  
New York, New York 10022  
Facsimile: (212) 754-0330  
E-mail : ahudders@golenbock.com  
                  cvandemark@golenbock.com  
Attention: Andrew D. Hudders, Esq.  
                  Carl VanDemark, Esq.

or to such other address, facsimile number or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iv) above, respectively. A copy of the e-mail transmission containing the time, date and recipient e-mail address shall be rebuttable evidence of receipt by e-mail in accordance with clause (iii) above.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including, as contemplated below, any assignee of any of the Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Buyers; except to in the event of a Change in Control (as defined in the Notes) where the Company repays in full the outstanding Notes of each Buyer or offers each Buyer an election to be repaid in full under such outstanding notes contingent only upon consummation of such Change in Control. A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing and shall expire on the conversion of the Notes into Conversion Shares. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements for one (1) counsel to all the Buyers (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in any of the Transaction Documents, (b) any breach of any covenant, agreement or obligation of the Company contained in any of the Transaction Documents or (c) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) or which otherwise involves such Indemnitee that arises out of or results from (i) the execution, delivery, performance or successful enforcement of any of the Transaction Documents, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (iii) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement. No Indemnitee shall be entitled to indemnification under this Section 9(k) to the extent an Indemnified Liability arises out of the gross negligence, willful or intentional misconduct or misrepresentation or fraud of such Indemnitee or the Buyer to whom such Indemnitee is related. Nothing in this Agreement or any of the other transaction documents shall prevent or release a claim of the Company against any Buyer for breach of any provision of the Transaction Agreement or otherwise.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for stock dividends, stock splits, stock combinations and other similar transactions that occur with respect to the Common Stock after the date of this Agreement.

(m) Remedies. Each Person having any rights under any provision of this Agreement shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to seek specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars (“**U.S. Dollars**”), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Independent Nature of Buyers’ Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer’s investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Buyer, solely, and not between the Company and the Buyers collectively and not between and among the Buyers.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

**COMPANY:**

**DVINEWAVE INC.**

By: \_\_\_\_\_

Name: Michael Leabman

Title: President

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**EXHIBIT A**

**SCHEDULE OF BUYERS**

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
<b>Buyer</b>	<b>Address, E-mail and/or Facsimile Number</b>	<b>Original Principal Amount of Note</b>	<b>Purchase Price</b>	<b>Legal Representative's Address and Facsimile Number</b>

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## REGISTRATION RIGHTS AGREEMENT FOR INVESTORS

**THIS REGISTRATION RIGHTS AGREEMENT** (this “Agreement”) is made as of May 16, 2013, by and among DvineWave Inc., a Delaware corporation (“Company”), and the persons listed on Schedule A hereto, referred to individually as the “Holder” and collectively as the “Holders”. Certain terms are defined in Section 13 hereof.

A. In connection with the Securities Purchase Agreement by and among the parties hereto, dated as of May 16, 2013 (the “Securities Purchase Agreement”), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to each Holder of the Notes (as defined in the Securities Purchase Agreement), which will be convertible into Conversion Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Notes.

B. To induce the Holders of the Notes to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act, and applicable state securities laws to the Holders, and their assignees or successors in interest, certain rights to provide for the registration for resale of the Conversion Shares by means of a Registration Statement under the Securities Act, pursuant to the terms of this Agreement. Such Conversion Shares acquired by the Holders and their assignees or successors in interest, are referred to collectively as the “Registrable Securities”.

C. Unless otherwise provided in this Agreement, capitalized terms used herein shall have the respective meanings set forth in Section 11 hereof.

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Holder hereby agree as follows:

1. Registration.

(a) Piggyback Registrations Rights. Subject to the inapplication of this provision in connection with an Initial Public Offering (as hereinafter defined) as stated below, if, at any time after the Company becomes a Reporting Company through the date that is five years after the date the Company becomes a Reporting Company, there is not an effective Registration Statement covering the Registrable Securities, and the Company shall determine to prepare and file with the Commission a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8, each as promulgated under the Securities Act, or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit, or a registration in which the only stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered, or any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities) then the Company shall send to the Holders a written notice of such determination at least twenty (20) days prior to the filing of any such Registration Statement and shall, include in such Registration Statement all Registrable Securities requested by any Holder hereunder to be included in the registration within ten (10) days after the Company sends such notice to the Holders (the “Piggyback Shares”) for resale and offer on a continuous basis pursuant to Rule 415; provided, however, that (i) if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the Registration Statement filed in connection with such registration, the Company determines for any reason not to proceed with such registration, the Company will be relieved of its obligation to register any Registrable Securities in connection with such registration, (ii) in case of a determination by the Company to delay registration of its securities, the Company will be permitted to delay the registration of Registrable Securities for the same period as the delay in registering such other securities, (iii) each Holder is subject to confidentiality obligations with respect to any information gained in this process or any other material non-public information he, she or it obtains, (iv) each Holder or assignee or successor in interest is subject to all applicable laws relating to insider trading or similar restrictions; and (v) if all of the Registrable Securities of the Holders cannot be so included due to Commission Comments or Underwriter Cutbacks, then the Company may reduce, in accordance with the provisions of Section 1(c) hereof, the number of securities covered by such Registration Statement to the maximum number which would enable the Company to conduct such offering in accordance with the provisions of Rule 415 or that would be consistent with the managing underwriter’s assessment regarding the successful completion of the offering. For an abundance of clarity, the piggyback registration rights set forth in this Agreement do not grant any right to have any shares of Common Stock or other security of the Company, including the Registrable Securities and the Piggyback Shares, included as part of the offering or for resale on a registration statement filed or declared effective in connection with the consummation of the Company’s initial public offering of its securities (the “Initial Public Offering”)

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(b) Initial Piggyback Registration Statement. At the election of each Holder, the Company shall be required to include up to all Piggyback Shares held by such Holder for resale and offer on a continuous basis pursuant to Rule 415 in the first Registration Statement for an offering that is not the Company's Initial Public Offering ("Initial Piggyback Registration Statement"); *provided, however*, that if all of the Registrable Securities of the Holders cannot be so included due to Commission Comments or Underwriter Cutbacks, then the Company may reduce, in accordance with the provisions of Section 1(c) hereof, the number of securities covered by the Initial Piggyback Registration Statement to the maximum number which would enable the Company to conduct such offering in accordance with the provisions of Rule 415 or that would be consistent with the managing underwriter's assessment regarding the successful completion of the offering.

(c) Cutback Provisions. In the event all of the Registrable Securities cannot be or are not included in a Registration Statement due to Commission Comments or Underwriter Cutbacks, the Company and the Holders agree that securities shall be removed from such Registration Statement in the following order until no further removal is required by Commission Comments or Underwriter Cutbacks:

(i) First, any securities held by any former employee, consultant or affiliate of the Company shall be removed, pro rata based on the number of securities being registered for such former employees, consultants or affiliates held by all of the former employees of the Company and any of their affiliates and successors in interest, whether pursuant to agreement or otherwise and any other person with any registration rights outstanding on the date hereof;

(ii) Second, the securities held by MDB Capital Group LLC and its members and affiliates, if any, (A) obtained solely by reason of providing services to the Company, which are being registered pursuant to any registration rights agreement to which MDB Capital Group LLC and the Company are party or (B) any securities held by MDB Capital Group LLC or its members or affiliates which were acquired in open market transactions from persons or entities in whose hands the shares were not restricted securities (and not from the Company or any Holder or any Person who purchase their securities directly from the Company) upon payment of a purchase price in cash after the Company's Initial Public Offering; and

(iii) Third, the Registrable Securities held by the Holders that are requested to be included in the Registration Statement shall be removed, pro rata based on the number of Registrable Shares held by each Holder in comparison to the number of Registrable Securities held by all Holders who have requested to include any Registrable Securities in the Registration Statement.

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(d) Mandatory Registrations. In the event all of the Piggyback Shares of the Holders are not included in a Registration Statement due to Commission Comments, the Company shall prepare and file an additional Registration Statement (the "Follow-up Registration Statement") with the Commission within sixty (60) days following the effectiveness of the previously filed Registration Statement; *provided, however*, that the time period for filing the Follow-up Registration shall be extended to the extent that the Commission publishes written Commission Guidance or the Company receives written Commission Guidance which provides for a longer period before a Follow-up Registration Statement may be filed. The Follow-up Registration Statement shall cover the resale of all of the Registrable Securities that were excluded from any previously filed Registration Statement. In the event that all of the Piggyback Shares have not been registered in a Registration Statement after the Follow-up Registration Statement has been declared effective, the Company shall use commercially reasonable efforts thereafter to register any remaining unregistered Registrable Securities, subject to the provisions of Section 1(e) hereof.

(e) Filing; Content. The Company will use its commercially reasonable efforts to cause each Registration Statement pursuant to which any Registrable Securities are included, including the Initial or Follow-up Registration Statement, to contain the Plan of Distribution substantially similar to that attached hereto as Schedule B (which, for the avoidance of doubt, may be modified to respond to comments, if any, received by the Commission or suggestions of the managing underwriter). The Company shall use its commercially reasonable efforts to cause any Registration Statement filed under this Section 1, including the Initial and Follow-up Registration Statement, to be declared effective under the Securities Act as promptly as practicable after the filing thereof and shall keep such Registration Statement continuously effective under the Securities Act until the earlier of (i) one year after its Effective Date (provided, however, the one year period shall be extended for any Grace Period), (ii) such time as all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holders, or (iii) such time as all of the Registrable Securities covered by such Registration Statement may be sold by the Holders pursuant to Rule 144 without regard to both the volume limitations for sales as provided in Rule 144 and the limitations for such sales provided in Rule 144(i), if applicable, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holder ("Effectiveness Period"). By 5:00 p.m. (New York City time) on the business day immediately following the Effective Date of a Registration Statement, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement (whether or not such filing is technically required under such Rule).

(f) Termination of Registration Rights. The registration rights afforded to the Holders under this Section 1 shall terminate on the earliest date when all Registrable Securities of the Holder either: (i) have been publicly sold by the Holder pursuant to a Registration Statement, (ii) have been covered by an effective Registration Statement which has been effective for an aggregate period of sixteen (16) months (whether or not consecutive), provided, however, the time period shall be calculated so as to exclude any Grace Period, or (iii) may be sold by the Holder pursuant to Rule 144 without regard to both the volume limitations for sales as provided in Rule 144 and the limitations for such sales provided in Rule 144(i), if applicable, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holder.

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2. Demand Registration Rights.

(a) Demand Right. Commencing on the date that is one hundred eighty (180) days after the Company becomes a Reporting Company, the Holders as a group representing at least 50% of the Registrable Securities (a “Requesting Group”) shall have a separate one-time right (i.e., a one-time right for all the Holders collectively, which may be exercised once by any Requesting Group and then never thereafter by any Holder or Holders, whether or not a part of the Requesting Group), by written notice to the Company, signed by such Holders (the “Demand Notice”), to request the Company to register for resale all Registrable Securities included by the Requesting Group in the Demand Notice (the “Demand Shares”) under and in accordance with the provisions of the Securities Act by filing with the Commission a Registration Statement covering the resale of such Demand Shares (the “Demand Registration Statement”). A copy of the Demand Notice also shall be provided by the Company to each of the other Holders who will have fifteen (15) days to notify the Company in writing to include their Registrable Securities as part of the Demand Shares, the failure of which, however, shall not in any way affect the rights of the Requesting Group pursuant to this Section 2(a) or increase or change the rights of any Holder under this Section 2(a). The Demand Registration Statement required hereunder shall be on any form of registration statement then available for the registration of the Registrable Securities, as selected by the Company in accordance with applicable law and regulation. The Company will use its commercially reasonable efforts to file the Demand Registration Statement within forty-five (45) days of the receipt of the Demand Notice, provided if the Demand Notice is given within the forty-five (45) days after the prior fiscal year end, then the Company will use its reasonably commercial efforts to file the Demand Registration Statement within ninety (90) days of the fiscal year end of the Company. The Company shall use its commercially reasonable efforts to cause the Demand Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof and to keep the Demand Registration Statement continuously effective under the Securities Act until the earlier of (i) the date when all Registrable Securities have been sold pursuant to the Demand Registration Statement or an exemption from the registration requirements of the Securities Act; (ii) the date that the Holders can sell all of their Registrable Securities, pursuant to Rule 144; and (iii) one (1) year from the Effective Date of the Registration Statement.

(b) Inclusion of Other Registrable Shares and Cutback Provisions. If as a result of Commission Comments, not all shares are included that are desired to be included in a Registration Statement for the Demand Shares, the provisions of Section 1(c) shall apply, subject to the Demand Priority (as defined below) of the Requesting Group. Pursuant to the piggyback registration rights granted under this Agreement, the Company may include the Registrable Shares of the other Holders which will be subject to the provision of Section 1(c) hereof, except that under Section 1(c)(iii), there will be no cutback of the Registrable Securities of the Requesting Group until the Holders of Piggyback Shares and the shares of any other person exercising piggyback rights under any other registration rights agreement (except for MDB Capital Group LLC, which shall have the priority established in Section 1(c)) have been removed, and thereafter if any further Registrable Securities have to be removed then those of the Requesting Group will be removed pro rata (the “Demand Priority”). Notwithstanding the foregoing, if any other securities of any person other than the Holders or the Requesting Group or MDB Capital Group LLC are included on the Demand Registration Statement, such securities will be removed, if required pursuant to Commission Comments, after removal of the securities indicated in Section 1(c)(i) and before the securities indicated in Section 1(c)(ii), as such persons decide among themselves, and if there is no agreement as to such removal provided to the Company within a reasonable time, time being of the essence, then all the such securities will be removed.

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(c) Underwritten Demand Registration. If the Requesting Group intends to distribute the Registrable Securities covered by its request by means of an underwriting, it shall so advise the Company as a part of its request and the Requesting Group shall include such information in the Demand Notice. The underwriter will be selected by the Company and be reasonably acceptable to the Demand Group, provided that MDB Capital Group LLC shall be deemed acceptable. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by the Requesting Group and such Holder) to the extent provided herein. The Company and all Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Any Registrable Securities excluded from or withdrawn from any applicable underwriting shall be withdrawn from registration.

(d) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a Registration Statement pursuant to this Section 2, a certificate signed by the chief executive officer of the Company stating that in the good faith judgment of the Company's board of directors, it would be seriously detrimental to the Company and its stockholders for such Registration Statement to be filed, the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Requesting Group; provided, however, that the Company may not utilize this right more than once in any twelve-month period, and provided, further, that the Company shall not register any securities for the account of itself or any other stockholder during such ninety (90)-day period ((other than on Form S-4 or Form S-8, each as promulgated under the Securities Act, or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit).

(e) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2 during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date ninety (90) days after the effective date of, a registration subject to Section 1 hereof, unless such offering is the Initial Public Offering of the Company's securities, in which case, ending on a date one hundred thirty-five (135) days after the Effective Date of such registration subject to Section 1 hereof; provided that the Company is actively employing in good faith all commercially reasonable efforts to cause such Registration Statement to become effective.

3. Registration Procedures. Whenever any Registrable Securities are to be registered pursuant to this Agreement, the Company shall use its commercially reasonable efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall have the following obligations:

(a) The Company shall prepare and file with the Commission a Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective.

(b) The Company shall prepare and file with the Commission such amendments (including post-effective amendments) and supplements to a Registration Statement and the Prospectus used in connection with such Registration Statement, which Prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Registration Statement effective at all times during the Effectiveness Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement by reason of the Company filing a report on Forms 10-K, 10-Q or Current Report on Form 8-K, or any analogous report under the Securities Exchange Act, the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the Commission on the same day on which the Securities Exchange Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

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(c) The Company shall furnish to each Holder of Registrable Securities in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the Commission at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by such seller, all exhibits and each preliminary Prospectus, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the Prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such seller may reasonably request), and (iii) such other documents, including copies of any preliminary or final Prospectus, as such seller may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such seller.

(d) The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by any seller of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Effectiveness Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Effectiveness Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

(e) The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest practicable time and to notify the Holder of any Registrable Securities included in the offering under such Registration Statement of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(f) The Company shall notify the Holder in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the Prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten (10) copies of such supplement or amendment to the Holder (or such other number of copies as the Holder may reasonably request).

(g) The Company shall promptly notify the Holder in writing (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to the Holder by facsimile on the same day of such effectiveness or by overnight delivery), (ii) of any request by the Commission for amendments or supplements to a Registration Statement or related Prospectus or related information, and (iii) of the Company’s reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

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(h) If the Holder is required under applicable securities laws to be described in a Registration Statement as an underwriter, at the reasonable request of such Holder, the Company shall use its best efforts to furnish to such Holder, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as the Holder may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Holder, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Holder.

(i) If the Holder is required under applicable securities laws to be described in a Registration Statement as an underwriter, then at the request of such Holder in connection with such Holder's due diligence requirements, the Company shall make available for inspection by (i) the Holder, (ii) the Holder's legal counsel, and (iii) one firm of accountants or other agents retained by the Holder (collectively, the "Inspectors"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to the Holder) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the Securities Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement of which the Inspector has knowledge. Each Holder agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and the Holder) shall be deemed to limit the Holder's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning the Holder provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement, or (v) the Holder provides information to the Company intended for inclusion in a Registration Statement. The Company agrees that it shall, upon learning that disclosure of such information concerning the Holder is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to the Holder if permitted by applicable law or regulation and allow the Holder, at the Holder's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

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(k) The Company shall (i) if applicable, use its best efforts to cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) otherwise, use its commercially reasonable efforts to secure designation and quotation of all of the Registrable Securities covered by a Registration Statement on any one of the different levels of The NASDAQ Stock Market, or (iii) if, despite the Company's best efforts or commercially reasonable efforts, as applicable, to satisfy, the preceding clauses (i) and (ii) the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to instead secure the inclusion for quotation on the Over-the-Counter Bulletin Board for such Registrable Securities and, without limiting the generality of the foregoing, to use its commercially reasonable efforts to encourage at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities. For the avoidance of doubt, subject to and in accordance with Section 5, the Company shall pay all fees and expenses of the Company in connection with satisfying its obligation under this Section 3(k).

(l) If requested by the Holder, the Company shall (i) as soon as practicable incorporate in a Prospectus supplement or post-effective amendment such information as the Holder reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) as soon as practicable make all required filings of such Prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment; and (iii) as soon as practicable, supplement or make amendments to any Registration Statement if reasonably requested by the Holder holding any Registrable Securities.

(m) The Company shall cooperate with each Holder who holds Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Holder may reasonably request and registered in such names as the Holder may request.

(n) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities, but only in matters not contemplated Section 3(d) by or reasonably related to such matters (which matters are to be governed exclusively by Section 3(d)), as may be strictly necessary to consummate the disposition of such Registrable Securities by the Holder strictly in accordance with the Plan of Distribution included in the Registration Statement (as such Plan of Distribution may be modified from time to time in any filing with the Commission).

(o) The Company shall make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby (or, if different, within the period permitted for the filing of reports on Forms 10-K or 10-Q), an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the Effective Date of a Registration Statement.

(p) The Company shall otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission in connection with any registration hereunder.

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(q) Within two (2) business days after a Registration Statement which covers Registrable Securities is ordered effective by the Commission, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Holder whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the Commission in the form attached hereto as Exhibit A and the Irrevocable Transfer Agent Instructions in the form attached hereto as Exhibit B.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date of a Registration Statement, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company, in the best interest of the Company and not, after consultation with legal counsel, otherwise required (a “Grace Period”); provided, that the Company shall promptly (i) notify the Holder in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Holder) and the date on which the Grace Period will begin, and (ii) notify the Holder in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed sixty (60) consecutive days and during any three hundred sixty-five (365) day period such Grace Periods shall not exceed an aggregate of one hundred twenty (120) days (each, an “Allowable Grace Period”). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Holder receives the notice referred to in clause (i) and shall end on and include the later of the date the Holder receives the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(e) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Holder in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale, and delivered a copy of the Prospectus included as part of the applicable Registration Statement (unless an exemption from such Prospectus delivery requirements exists), prior to the Holder’s receipt of the notice of a Grace Period or, if earlier, Holders knowledge of the material, non-public information concerning the Company that gave rise to the Grace Period, and for which the Holder has not yet settled.

(s) In the event the number of shares available under any Registration Statement filed pursuant to this agreement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement in accordance with the requirements of this Agreement or a Holder’s allocated portion of the Registrable Securities pursuant to Sections 1(c) or 2(b), the Company may, as an alternative, to filing a Follow-up Registration Statement, amend Registration Statement (if permissible) on or before the date the filing of a Follow-up Registration Statement would be required, so as to cover at least the required number of Registrable Securities (but taking account of any SEC Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its commercially reasonable efforts to cause such any such amendment to such Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC.

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4. Obligations of the Holders.

(a) At least five (5) business days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Holders in writing of the information the Company requires from each Holder if the Holder's Registrable Securities are to be included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to any Registrable Securities of the Holder that the Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) The Holder, by the Holder's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless the Holder has notified the Company in writing of the Holder's election to exclude all of the Holder's Registrable Securities from such Registration Statement.

(c) The Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3(e) or 3(f) or of a Grace Period under Section 3(q), the Holder will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until the Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Sections 3(e) or 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Holder in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale prior to the Holder's receipt of a notice from the Company of the happening of any event of the kind described in Sections 3(e) or 3(f) or of any Grace Period, or, if earlier, Holders knowledge of the material, non-public information concerning the Company or the facts or circumstances that gave rise to the Grace Period or of the Section 3(e) or 3(f) event, and for which the Holder has not yet settled.

(d) The Holder covenants and agrees that it will comply with the Prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to a Registration Statement.

5. Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement, including without limitation all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters (excluding discounts, commissions and placement agent fees) and other Persons retained by the Company (all such expenses being herein called "Registration Expenses"), shall be borne by the Company. Further, the Company shall pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

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(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Holder, the directors, officers, members, partners, employees, agents, representatives of, and each Person, if any, who controls the Holder within the meaning of the Securities Act or the Securities Exchange Act (each, an “Indemnified Person”), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys’ fees, amounts paid in settlement or expenses, joint or several, (collectively, “Claims”) incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the Commission, whether pending or threatened, whether or not an indemnified party is or may be a party thereto (“Indemnified Damages”), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “blue sky” laws of any jurisdiction in which Registrable Securities are offered (“Blue Sky Filing”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary Prospectus if used prior to the effective date of such Registration Statement, or contained in the final Prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the Commission) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the Securities Act or the Securities Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, “Violations”). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person or by a Related Information Provider expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto and (ii) shall not be available to the extent such Claim is based on a failure of the Holder to deliver or to cause to be delivered the Prospectus made available by the Company, including a corrected Prospectus, if such Prospectus or corrected Prospectus was timely made available by the Company pursuant to Section 3(c); and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Holder pursuant to Section 10. “Related Information Provider” means, in respect of any Indemnified Person, the Holder to which such Indemnified Person is related or another Indemnified Person that is related to the Holder to which such Indemnified Person is related.

(b) To the fullest extent permitted by law, in connection with any Registration Statement in which a Holder’s Registrable Securities are included or in which a Holder is otherwise participating, such Holder will severally and not jointly indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the Registration Statement, each Person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder or other Person selling securities in such Registration Statement and any controlling person of any such underwriter or other Holder or other Person (each an “Other Indemnified Person”), against any Claims or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder or by a Related Information Provider expressly for use in connection with such Registration Statement; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any Other Indemnified Person intended to be indemnified pursuant to this Section 6(b), in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any such Claim if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld; provided, further, however, that the Holder shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Holder as a result of the sale of Registrable Securities pursuant to such Registration Statement, except in the case of fraud by such Holder. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Other Indemnified Person and shall survive the transfer of the Registrable Securities by the Holder pursuant to Section 10.

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(c) Promptly after receipt by an Indemnified Person or Other Indemnified Person under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Other Indemnified Person shall, if a claim for indemnification in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and reasonably satisfactory to the Indemnified Person or the Other Indemnified Person (provided that the counsel that advised the Company in connection with the Registration Statement shall be deemed satisfactory to any Indemnified Person and the counsel that advised the Holder with respect to information provided by Holder or any Related Information Provider giving rise to a Violation shall be deemed satisfactory to any Other Indemnified Person if the Company was informed of the identity of such counsel in connection with the receipt of such information and did not request that Holder seek additional counsel in connection with such information), as the case may be; provided, however, that an Indemnified Person or Other Indemnified Person shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Persons or all such Other Indemnified Persons to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Other Indemnified Person and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Other Indemnified Person and any other party represented by such counsel in such proceeding. The Other Indemnified Person or Indemnified Person, as applicable, shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to such Other Indemnified Person or such Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Other Indemnified Person or Indemnified Person, as applicable, reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Other Indemnified Person or Indemnified Person, as applicable, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Other Indemnified Person or such Indemnified Person of a release from all liability in respect to the Claim at issue, and such settlement shall not include any admission as to fault on the part of such Other Indemnified Person or such Indemnified Person. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Other Indemnified Person or Indemnified Person, as applicable, with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Other Indemnified Person, as applicable, under this Section 6, except to the extent that the indemnifying party is materially prejudiced in its ability to defend such action.

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(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred, subject to an undertaking by the Indemnified Person or the Other Indemnified Person, as applicable, to return such payments to the extent a court of competent jurisdiction or other competent authority determines that such payments were unlawful or were not required under this Agreement.

(e) Without any duplication or multiplication of damages, the indemnity agreements contained herein shall be in addition (i) any cause of action or similar right of the Other Indemnified Person or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(f) Unless suspended by the underwriting agreement applicable to any registration, the obligations of the Company and Holders under this Section 6 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement, or otherwise.

7. Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, such indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement

8. No Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

9. Reports under Securities Exchange Act. With a view to making available to the Holder the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the Commission that may at any time permit the Holder to sell securities of the Company to the public without registration, once the Company becomes a Reporting Company, to use its commercially reasonable efforts to continue to be a Reporting Company for five years and further during such time it is a Reporting Company the Company agrees to use its best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

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(c) furnish to the Holder so long as the Holder owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the Securities Act and the Securities Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Holder to sell such securities pursuant to Rule 144 without registration.

10. Assignment of Registration Rights. The rights under this Agreement shall be automatically assignable by the Holder to any transferee of all or any portion of the Holder's Registrable Securities if: (i) the Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is or might be restricted under the Securities Act and applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

11. Subsequent Registration Rights. The Company agrees that after the date hereof and excluding any registration rights agreement with MDB Capital Group LLC or its members and affiliates, it will not grant to any person any registration right or proceed to register any securities of any person unless it provides in such agreement or registration that any securities being registered under such agreement or registration will be subject to the cutback provisions of this Agreement as provided in Section 1(c) and Section 2(b).

12. Amendment of Registration Rights. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least a majority of the then outstanding Registrable Securities. Any amendment so effected will be binding upon all Holders, whether or not such Holder consents thereto.

13. Definitions.

(a) "Commission" means the Securities and Exchange Commission.

(b) "Commission Comments" means written comments pertaining solely to Rule 415 or other comments to the extent they relate to Rule 415 which are received by the Company from the Commission, and a copy of which shall have been provided by the Company to the Holder, to a filed Registration Statement which limit the amount of shares which may be included therein to a number of shares which is less than such amount sought to be included thereon as filed with the Commission.

(c) "Commission Guidance" means (i) any publicly-available written or oral guidance, comments, requirements or requests of the Commission staff, (ii) the Securities Act or (iii) the Securities Exchange Act.

(d) "Common Stock" means the common stock, \$0.00001 par value per share, of the Company.

(e) "Effective Date" means, as to a Registration Statement, the date on which such Registration Statement is first declared effective by the Commission.

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(f) “Person” means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

(g) “Prospectus” means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus

(h) “Registrable Securities” means (i) the Conversion Shares issued or issuable to the Holder or its assignees or successor in interest pursuant to conversion of the Notes and (ii) any other shares of Common Stock or any other securities issued or issuable with respect to the securities referred to in clause (i) by way of a stock dividend or stock split or in connection with an exchange or combination of shares, recapitalization, merger, consolidation or other reorganization.

(i) “Registration Statement” means any registration statement (including, without limitation, the Initial Piggyback Registration Statement or the Follow-up Registration Statement) required to be filed hereunder (which, at the Company’s option, may be an existing registration statement of the Company previously filed with the Commission, but not declared effective), including (in each case) the Prospectus, amendments and supplements to the Registration Statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in the Registration Statement.

(j) “Reporting Company” means a company that is obligated to file periodic reports under Sections 13 or 15(d) of the Securities Exchange Act.

(k) “Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission that may at any time permit the Holder to sell securities of the Company to the public without registration.

(l) “Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(m) “Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(n) “Securities Act” means the Securities Act of 1933, as amended from time to time together with the regulations promulgated thereunder.

(o) “Securities Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, together with the regulations promulgated thereunder.

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(p) “Underwriter Cutbacks” means any reduction in the number of shares suggested by any managing underwriter to be included in a registration under a Registration Statement based upon the guidance in this Section 13(p). In connection with any offering involving an underwriting of shares of the Company’s capital stock, the Company shall not be required under Section 1 to include any of the Holders’ securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities to be sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling shareholders according to the total amount of securities entitled to be included therein owned by each selling shareholder or in such other proportions as shall mutually be agreed to by such selling shareholders); provided, that any such cutback will be effected in accordance with the priorities established by Section 1(c); provided further that in no event shall the amount of securities of the selling Holders included in the offering be reduced below 30% of the total amount of securities included in such offering.

14. Market Stand-Off. In connection with the Initial Public Offering of the Company’s securities, if any, and upon request of the managing or lead underwriter made to the Company in connection with such offering, each Holder will agree with the Company and the underwriter not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration, if any) without the prior written consent of the managing or lead underwriter of such offering, for a period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting requirements binding on such Holder that are substantially consistent with this Section 4 as may be requested by the underwriters at the time of the such offering; provided, however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16) day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 4 shall continue to apply until the end of the third (3rd) trading day following the expiration of the fifteen (15) day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond two hundred sixteen (216) days after the effective date of the registration statement. In order to enforce the restriction set forth above or any other restriction agreed by Holder, including without limitation any restriction requested by the underwriters of any Initial Public Offering of the securities of the Company agreed by such Holder, the Company may impose stop-transfer instructions with respect to any security acquired under or subject to this Agreement until the end of the applicable stand-off period. The Company’s underwriters shall be beneficiaries of the agreement set forth in this Section 14. Each Holder agrees that prior to the Company’s Initial Public Offering it will not transfer securities of the Company unless each transferee agrees in writing to be bound by all of the provisions of this Section 14, provided that this Section 14 shall not apply to transfers pursuant to a Registration Statement.

Each Holder agrees that a legend reading substantially as follows shall be placed on all certificates representing all Registrable Securities of each Holder issued before the Company’s Initial Public Offering (and the shares or securities of every other person subject to the restriction contained in this Section 14):

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THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS AFTER THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

After the Company's Initial Public Offering, upon request of any Holder who is a holder of record of the shares represented by any stock certificate(s) bearing such legend and the surrender of such certificate(s) in connection with such request, the Company shall cause its transfer agent to promptly issue replacement certificate(s) not bearing such legend representing the shares represented by such surrendered stock certificate(s).

15. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one business day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

DvineWave Inc.  
207 Veritas Ct.  
San Ramon, CA 94582  
E-mail: mleabman@dvinewave.com  
Attention: Michael Leabman, President

With a copy (for informational purposes only) to:

Much Shelist, P.C.  
191 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
Fax Number 312.521.2898  
E-mail: ggrove@muchshelist.com  
Attention: Gregory D. Grove, Esq.

and

If to any Holder, at the address for such Holder on the records of the Company, which may include the information on Schedule A hereto.

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or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) This Agreement and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(f) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(g) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission or other electronic transmission (such as but not limited to an email attachment in PDF format) of a copy of this Agreement bearing the signature of the party so delivering this Agreement. This Agreement may also be executed by electronic signature of such Person.

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(i) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. As a condition precedent to participating in any underwritten offering each Holder that desires to participate in such offering shall sign any underwriting agreement related to such offering and all other documents requested by the managing underwriter that all other selling Holders are required to sign and all other documents customarily required by underwriters that all other security holders of the Company are requested to sign by the managing underwriter if the failure by all or any substantial portion of such security holders to sign would jeopardize the success of the underwritten offering.

(j) All consents and other determinations required to be made by the Holder pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Holder.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(l) This Agreement is intended for the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(m) The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder, and no provision of this Agreement is intended to confer any obligations on a Holder vis-à-vis any other Holder. Nothing contained herein, and no action taken by any Holder pursuant hereto, shall be deemed to constitute the Holder as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

(n) Currency. As used herein, “Dollar”, “US Dollar” and “\$” each mean the lawful money of the United States.

[Signature pages follow immediately]

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**IN WITNESS WHEREOF**, the parties have executed this Registration Rights Agreement as of the date first written above.

**COMPANY:**

**DVINEWAVE INC.**

By:

\_\_\_\_\_  
Michael Leabman, President

**HOLDERS:**

**PRINT NAME:**

\_\_\_\_\_

**SIGNATURE:**

\_\_\_\_\_

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**EXHIBIT A**

**FORM OF NOTICE OF EFFECTIVENESS  
OF REGISTRATION STATEMENT**

[Transfer Agent]  
[Address]  
Attention:

Re: \_\_\_\_\_ (the "Company")

Ladies and Gentlemen:

[We are][I am] counsel to \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Company"), and have represented the Company in connection with that certain Registration Rights Agreement with \_\_\_\_\_ (the "Holder") (the "Registration Rights Agreement") pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement), under the Securities Act of 1933, as amended (the "1933 Act"). In connection with the Company's obligations under the Registration Rights Agreement, on \_\_\_\_\_, 20\_\_, the Company filed a registration statement on Form S-[1] (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Registrable Securities which names the Holder as a selling stockholder thereunder.

In connection with the foregoing, [we][I] advise you that a member of the SEC's staff has advised [us][me] by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and [we][I] have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

If applicable, you may receive notices from the Company pursuant to the Company's rights or obligations under the Registration Rights Agreement in connection with stop orders or other restrictions on transfer of the shares included in such Registration Statement, but [we][I] [are][am] not obligated to update this letter or otherwise inform you of any such stop order or restriction.

[Other applicable disclosure to be inserted here, if appropriate.]

Very truly yours,

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**EXHIBIT B**

**IRREVOCABLE TRANSFER AGENT INSTRUCTIONS**

\_\_\_\_\_, 2013

[Addressed to Transfer Agent]

\_\_\_\_\_  
\_\_\_\_\_

Attention: [\_\_\_\_\_]

Ladies and Gentlemen:

Reference is made to that certain Registration Rights Agreement, dated as of \_\_\_\_\_, 2013 (the "**Agreement**"), by and among \_\_\_\_\_, a \_\_\_\_\_ corporation (the "**Company**"), and \_\_\_\_\_ (the "**Holder**"), pursuant to which the Company is obligated to register certain shares held by the Holder (the "**Holder Shares**") of Common Stock of the Company, par value \$\_\_\_\_\_ per share (the "**Common Stock**").

This letter shall serve as our irrevocable authorization and direction to you (provided that you are the transfer agent of the Company at such time) to issue shares of Common Stock upon transfer or resale of the Holder Shares, unless we have otherwise informed you of the termination of effectiveness of the registration statement in which the Holder Shares are included, a stop order or another transfer restriction. We may also later inform you that after the termination of effectiveness of such registration statement that a registration statement in which the Holder's Shares are included, or that such stop order has been lifted or that such transfer restriction is not applicable, in which case this authorization and direction shall be reinstated and be effective.

You acknowledge and agree that so long as you have previously received (a) written confirmation from the Company's legal counsel that either (i) a registration statement covering resales of the Holder Shares has been declared and remains effective by the Securities and Exchange Commission (the "**SEC**") under the Securities Act of 1933, as amended (the "**1933 Act**"), or (ii) sales of the Holder Shares may be made in conformity with Rule 144 under the 1933 Act ("**Rule 144**"), (b) if applicable, a copy of such registration statement, and (c) notice from legal counsel to the Company or any Holder that a transfer of Holder Shares has been effected either pursuant to the registration statement (and a prospectus delivered to the transferee) or pursuant to Rule 144, then as promptly as practicable, you shall issue the certificates representing the Holder Shares registered in the names of such transferees, and such certificates shall not bear any legend restricting transfer of the Common Stock evidenced thereby and should not be subject to any stop-transfer restriction; provided, however, that if such shares of Common Stock are not registered for resale under the 1933 Act or are not able to be sold under Rule 144, then the certificates for such Common Shares shall bear the following legend:

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THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

A form of written confirmation from the Company's outside legal counsel that a registration statement covering resales of the Holder Shares has been declared effective by the SEC under the 1933 Act is attached hereto. We will inform you of any stop orders or other transfer restrictions.

Please execute this letter in the space indicated to acknowledge your agreement to act in accordance with these instructions. Should you have any questions concerning this matter, please contact me at \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_ (the "Company")

By: \_\_\_\_\_  
Name:  
Title:

THE FOREGOING INSTRUCTIONS ARE  
ACKNOWLEDGED AND AGREED TO

this \_\_\_ day of \_\_\_\_\_, 2013

**[TRANSFER AGENT]**

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Enclosures

Copy: Holder

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SCHEDULE A

LIST OF HOLDERS

Name

Address

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## SCHEDULE B

### SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are those issuable to the selling stockholders upon [conversion of the notes and exercise of the warrants]. For additional information regarding the issuance of the [notes and the warrants], see “Private Placement of Notes” above. We are registering the shares of common stock in order to permit the selling stockholders to offer the shares for resale [from time to time]. Except for the ownership of [the notes issued pursuant to and in connection with the Securities Purchase Agreement, and the warrants issued pursuant to and the agreements governing our engagement of MDB Capital Group LLC as a placement agent for the private placement of the notes and the engagement of MDB Capital Group LLC as an underwriter for a public offering of common stock by the Company, and our engagement of an affiliate of MDB Capital Group LLC as a consultant in respect of our patents and intellectual property] the selling stockholders have not had any material relationship with us within the past three years. ***[Adjust as necessary, according to the facts.]***

The table below lists the selling stockholders and other information regarding the beneficial ownership (as determined under Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) of the shares of common stock held by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by the selling stockholders, based on their respective ownership of shares of common stock[, notes and warrants,] as of \_\_\_\_\_, 20\_\_, [assuming conversion of the notes and exercise of the warrants held by each such selling stockholder on that date but taking account of any limitations on conversion and exercise set forth therein]. ***[Adjust as necessary, according to the facts.]***

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders [and does not take into account any limitations on (i) conversion of the notes set forth therein or (ii) exercise of the warrants set forth therein]. ***[Adjust as necessary, according to the facts.]***

In accordance with the terms of a registration rights agreement with the holders of the notes and the warrants, this prospectus generally covers the resale of [(i) the shares of common stock issued upon conversion of the notes and (ii) the maximum number of shares of common stock issuable upon exercise of the warrants, in each case, determined as if the outstanding notes and warrants were converted or exercised (as the case may be) in full (without regard to any limitations on conversion or exercise contained therein) as of the trading day immediately preceding the date this registration statement was initially filed with the SEC]. Because the conversion price of the notes and the exercise price of the warrants may be adjusted, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus. ***[Adjust as necessary, according to the facts.]***

See “Plan of Distribution.”

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Name of Selling Stockholder	Number of Shares of Common Stock Owned Prior to the Offering	Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Owned After the Offering
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[Notes (1) . . .] *[Adjust as necessary, according to the facts.]*

## PLAN OF DISTRIBUTION

*[Adjust as necessary, according to the facts and any underwriting arrangements.]*

We are registering the shares of common stock issued upon [conversion of the notes and issuable on exercise of the warrants] to permit the resale of these shares of common stock by the holders of [the notes and warrants] [from time to time] after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may sell all or a portion of the shares of common stock held by them and offered hereby [from time to time] [directly or] through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales made after the date the Registration Statement is declared effective by the SEC;
- broker-dealers may agree with a selling security holder to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling stockholders may transfer the shares of common stock by other means not described in this prospectus. If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholders may pledge or grant a security interest in some or all of the [notes, warrants or] shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and in each case together with the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any Person to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[ ] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

SENIOR SECURED CONVERTIBLE NOTE

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

DVINEWAVE INC.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: May 16, 2013

Principal Amount: U.S. \$[\_\_\_\_\_]

**FOR VALUE RECEIVED**, DvineWave Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of [\_\_\_\_\_] or its registered assigns ("**Holder**") the amount set out above as the Principal Amount (the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, prepayment or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on the outstanding Principal at the applicable Interest Rate (as defined below) from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date or acceleration, conversion, prepayment or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement (as defined below) on the Closing Date (as defined below) (collectively, the "**Notes**" and such other Senior Secured Convertible Notes, the "**Other Notes**"). Certain capitalized terms used herein are defined in Section 23.

1. **PREPAYMENT.** The Company may, at any time prior to the Maturity Date, prepay this Note in full, and in part, including all unpaid and accrued interest thereon, upon the written consent of the Holder. In the event the Company wishes to prepay this Note, it shall notify the Holder and the holders of the Other Notes to obtain their respective consents. A prepayment made pursuant to this Section 1 shall be made pro rata among all consenting Note holders. In addition, in the event of a Change of Control (as defined below), to the extent not earlier converted into Common Stock pursuant to Section 3, upon notice to the Holder of at least ten (10) Business Days prior to the consummation date of such Change of Control and without the consent of the Holder, the Company may, but shall not be required to, prepay all, but not less than all, of the outstanding principal and unpaid accrued interest under this Note upon the consummation of such Change in Control.

2. **INTEREST RATE.** So long as no Event of Default shall have occurred and be continuing, Interest on this Note shall accrue at a rate equal to six percent (6%) simple interest per annum. If an Event of Default shall have occurred and be continuing, the Interest Rate shall automatically be increased to twelve percent (12%) simple interest during the period of such Event of Default, until such Event of Default is later cured; provided that if the only Event of Default then occurring and continuing is an Event of Default under Section 4(a)(xii), such Interest Rate shall remain at six percent (6%). Interest due on this Note shall be computed on the basis of a three hundred sixty-five (365)-day year.

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3. **CONVERSION OF NOTES.** This Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Mandatory Conversion - IPO. Upon consummation of the IPO (as defined below), this Note shall automatically convert, through no further action on the part of the Company or the Holder, into that number of shares of Common Stock equal to the quotient of (A) the Conversion Amount (as defined below) divided by (B) the Conversion Price. For the purpose of this Section 3(a), the “**Conversion Price**” shall be equal to fifty percent (50%) of the IPO Price to Public (as defined below) (rounded to two decimal places, with \$0.005 being rounded upward); provided; however, that in no event shall the Conversion Price be greater than \$1.04 or nor less than \$0.52, in each case as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5.

(b) Mandatory Conversion – Election of the Holders. At any time after the Issuance Date and until ten (10) calendar days prior to the consummation of the IPO (as set forth in the IPO Notice), if the holders as a group of not less than a majority of the aggregate principal amount of all Notes then outstanding (the “**Required Note Holders**”) notify the Company in writing of their election to convert all of the Notes, then this Note shall automatically convert, through no further action on the part of the Company or the Holder, into that number of shares of Common Stock equal to the quotient of (A) the Conversion Amount divided by (B) the Conversion Price. For the purposes of this Section 3(b), the “**Conversion Price**” shall be equal to \$1.04 as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5.

(c) Optional Conversion. At any time after the Issuance Date and until ten (10) calendar days prior to the consummation of the IPO (as set forth in the IPO Notice), the Holder shall be entitled to convert this Note into that number of shares of Common Stock equal to the quotient of (A) the Conversion Amount divided by (B) the Conversion Price. For the purposes of this Section 3(c), the “**Conversion Price**” shall be equal to \$1.04 as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5.

(d) Optional Conversion - Financing. If the Holder has fully exercised its rights, if any, under Section 4(l) of the Securities Purchase Agreement in connection with any Financing, for a period of up to ten (10) Business Days following the consummation of such Financing, the Holder shall be entitled to convert up to the entire remaining Conversion Amount under this Note into that number of shares of Common Stock equal to the quotient of (A) the Conversion Amount (as defined below) divided by (B) the Conversion Price. For the purpose of this Section 3(d), the “**Conversion Price**” shall be equal to fifty percent (50%) of the Financing Price (as defined below) (rounded to two decimal places, with \$0.005 being rounded upward); provided; however, that in no event shall the Conversion Price be greater than \$1.04 or nor less than \$0.52, in each case as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5.

(e) Optional Conversion - Event of Default. Notwithstanding anything in this Note to the contrary, if a material Event of Default shall have occurred and be continuing, the Holder shall be entitled to convert this Note into that number of shares of Common Stock equal to the quotient of (A) the Conversion Amount divided by (B) the Conversion Price. For the purposes of this Section 3(e), the “**Conversion Price**” shall be equal to \$0.52 as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5.

(f) Mechanics of Conversion.

(i) Conversion; Issuance of Shares. To convert this Note pursuant to Sections 3(c), 3(d) or 3(e) above into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall deliver (whether via facsimile or otherwise) a copy of a properly and fully-completed and executed notice of conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Company. On or before the second Business Day following the date of receipt of such Conversion Notice, the Company shall transmit by facsimile or email (by attachment in PDF format) an acknowledgment of confirmation, in the form attached hereto as Exhibit II, of receipt of such Conversion Notice to the Holder and the Company’s transfer agent (the “**Transfer Agent**”). On or before the third Business Day following the date of receipt of a Conversion Notice but subject to the surrender for cancellation by the Holder of the original Note (or, if applicable, a Lost Note Affidavit (defined below)), or the triggering of a mandatory conversion pursuant to Section 3(a) or 3(b) above, the Company shall instruct the Transfer Agent to issue and deliver (via reputable overnight courier) to the Holder a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled, with the legends required by the Securities Purchase Agreement or applicable law.

(ii) Registration; Book-Entry. The Company shall maintain a register (the “**Register**”) for the recordation of the names and addresses of the registered holders of each Note and the principal amount of the Notes held by such holders (the “**Registered Notes**”). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder and the right to receive shares of Common Stock upon conversion hereof) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Subject to the satisfaction of applicable law and any restrictions that have been mutually agreed by the Company and the initial purchaser of this Note (which shall be binding upon the Holder hereof), upon receipt by the Company of the registered Holder’s written request to assign, transfer or sell all or part of any Registered Note by the holder thereof accompanied by this original Note for cancellation (or a Lost Note Affidavit, if applicable), the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the unrepaid and unconverted principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 13, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of its receipt of such a proper request, then the Register shall be automatically updated to reflect such assignment, transfer or sale (as the case may be). In furtherance of Section 25 hereof, if requested by the Holder in connection with conversion, the Holder and the Company shall maintain records showing the Principal and Interest converted and/or paid (as the case may be) and the dates of such conversion and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion; provided that the Holder and each prior Holder shall execute and deliver such documents as are reasonably requested by the Company to evidence the cancellation of this Note and in the event that the Holder and each prior Holder has not so delivered such executed documents, the Company reserves the right to demand surrender of physical surrender of the original Note upon conversion or a Lost Note Affidavit.

(iii) **No Fractional Shares; Transfer Taxes.** The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon any conversion.

4. **RIGHTS UPON EVENT OF DEFAULT.**

(a) **Event of Default.** Each of the following events shall constitute an “**Event of Default**”:

(i) the Company’s failure to convert this Note in strict compliance with Section 3, provided that there shall be no Event of Default during any period of good faith disagreement regarding whether the Holder has satisfied all requirements to require conversion of the Note pursuant to Section 3 but only if the Company has promptly responded to any assertion by the Holder that the Note has converted into Common Stock pursuant to Section 3;

(ii) the Company’s failure to pay to the Holder any amount of Principal, Interest when and as due under this Note or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, including, but not limited to, any Transaction Document (as defined in the Securities Purchase Agreement), except, in the case of a failure to pay Principal or Interest when and as due, in which case only if such failure remains uncured for a period of at least five (5) days;

(iii) the occurrence of any default under, redemption of or acceleration prior to maturity of any Indebtedness (as defined in the Securities Purchase Agreement) of the Company, other than with respect to any Other Notes;

(iv) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company and, if instituted against the Company by a third party, shall not be dismissed within sixty (60) days of their initiation;

(v) the commencement by the Company of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company in furtherance of any such action;

(vi) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree, order, judgment or other similar document adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal, state or foreign law; or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of sixty (60) consecutive days;

(vii) a final judgment or judgments for the payment of money aggregating in excess of \$500,000 are rendered against the Company and which judgments are not, within sixty (60) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay;

(viii) the Company either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$250,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$250,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company, which default or event of default would or would be reasonably expected to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, or condition (including financial condition) of the Company, individually or in the aggregate (a “**Material Adverse Effect**”);

(ix) other than as specifically set forth in another clause of this Section 4(a), the Company breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of thirty (30) days after actual knowledge of the Company of such breach;

(x) the occurrence a Material Adverse Effect for a period of more than five (5) days;

(xi) the validity or enforceability of any provision of any Transaction Document (as defined in the Securities Purchase Agreement) shall be contested by the Company, or a proceeding shall be commenced by the Company seeking to establish the invalidity or unenforceability thereof;

(xii) the Security Documents shall for any reason fail or cease to create a separate valid and perfected and, except (A) to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Agreement) in favor of each of the Secured Parties (as defined in the Security Agreement) or (B) as a result of the act or omission of Holder or the holder of any Other Note and not materially related to the failure of the Company to satisfy or tender to satisfy its obligations under the Security Documents, and such breach remains uncured for a period of three (3) Business Days after notice from Holder or the holder of any Other Note of such failure or ceasing;

(xiii) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company, if any such event or circumstance could have a Material Adverse Effect; or

(xiv) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

(b) Notice of an Event of Default. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within two (2) Business Days deliver written notice thereof via facsimile and overnight courier (with next day delivery specified) (an “**Event of Default Notice**”) to the Holder. At any time after the earlier of the Holder’s receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may, by notice to the Company (a “**Holder Default Notice**”), declare this Note to be forthwith due and payable, whereupon the Principal and all accrued and unpaid Interest thereon, plus all costs of enforcement and collection (including court costs and reasonable attorney’s fees), shall immediately become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company. This Note is intended to be entitled, if the Company’s assets are insufficient to permit payment in full in cash of this Note and all the Other Notes, to proportional payment along with each of the Other Notes to the extent payment is demanded by the Holder of this Note and the holders of any of the Other Notes in accordance with the Security Documents. In the event that the Company reasonably believes that it does not have the immediate liquidity to repay in full in cash this Note and all the Other Notes, the Company may, for a period of up to fifteen (15) Business Days, delay in payment of this Note after acceleration in connection with a Holder Default Notice to attempt to facilitate proper allocation of payments among the Holder of this Note and the holders of the Other Notes in accordance with the Security Documents and an opportunity for the holders of the Other Notes to become aware of the Holder Default Notice and promptly to exercise their rights under the Other Notes and the Security Documents. Nothing in this Section 4(b) will prevent the Holder from pursuing enforcement of its rights under the Security Documents.

## 5. ADJUSTMENT OF CONVERSION PRICE.

(a) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Company subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 5(a) shall become effective immediately after the effective date of such subdivision or combination.

(b) Other Events. In the event that the Company shall take any action to which the provisions of Section 5(a) are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 5 but not expressly provided for by such provisions, then the Company's Board of Directors shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 5(b) will increase the Conversion Price as otherwise determined pursuant to this Section 5, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's Board of Directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne by the Company.

6. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing, so long as any of the Notes remain outstanding, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of this Note, including without limitation complying with Section 7(b) hereof.

## 7. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. The Company shall at all times reserve and keep available out of its authorized but unissued shares Common Stock, solely for the purpose of effecting the conversion of the Note, no less than one hundred one percent (101%) of the maximum number of shares issuable on conversion of the Note (the "**Required Reserve Amount**").

(b) Insufficient Authorized Shares. If, notwithstanding Section 7(a), and not in limitation thereof, at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action within its power necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding, including without limitation using its best efforts to secure necessary Board of Directors and stockholder approvals, as further described below, to appropriately amend the Company's Certificate of Incorporation to provide for such increase. Without limiting the generality of the foregoing sentence, if not earlier approved by written consent of the stockholders, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than seventy (70) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock; in connection with any such meeting, the Company shall provide each stockholders with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal.

8. COVENANTS. Until all of the Notes have been converted or otherwise satisfied in accordance with their terms:

(a) Rank. All payments due under this Note shall rank *pari passu* with all Other Notes.

(b) New Subsidiaries. Simultaneously with the acquisition or formation of each New Subsidiary, the Company shall cause such New Subsidiary to execute, and deliver to each holder of Notes, all joinders to, or as applicable additional, Security Documents (as defined in the Security Agreement) as requested by the Holder. The Company shall not, directly or indirectly, acquire or form any New Subsidiary if such New Subsidiary would not be wholly-owned, directly or indirectly, by the Company.

(c) Announcement of Initial Public Offering. After such time as the Company determines that it will consummate an IPO, it shall send a notice to the Holder (the “**IPO Notice**”) of the proposed consummation date of the IPO (the expected date of such consummation is the “**Announced IPO Date**”), but such IPO Notice shall be dispatched in any event no later than ten (10) calendar days prior to such Announced IPO Date. To the extent that the Announced IPO Date is subsequently advanced or delayed, the Company shall send an amended IPO Notice of the revised proposed consummation date of the IPO to the Holder; provided, however, the Company may not advance the Announced IPO Date to a date less than five (5) Business Days after the date of the latest amending IPO Notice. If any Announced IPO Date is delayed, the amending IPO Notice will be deemed the establishment of a new Announced IPO Date and any Conversion Notice given based on a previously Announced IPO Date will be deemed cancelled unless the Holder affirms in writing the Conversion Notice as given.

9. SECURITY. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

10. DISTRIBUTION PARTICIPATION. In addition to any adjustments pursuant to Section 5, if while this Note remains outstanding, the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Note, then, in each such case, upon conversion of this Note entirely into Common Stock pursuant to Section 3, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein as if the Holder had held, as of immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution, the number of shares of Common Stock held immediately after such conversion.

11. AMENDING THE TERMS OF THIS NOTE. Provisions of this Note may be amended, modified, or a provision or requirement hereof waived only (a) with the written consent of the Company and the Holder or, (b) if this Note and each Other Note then outstanding is similarly amended, modified or waived, with the written consent of the Company and the Required Note Holders. If this Note (along with the Other Notes then outstanding) is amended pursuant to clause (b) of this Section 11, such amendment shall be binding on the Holder and each holder of each Other Note whether or not the Holder or such holder of such Other Note consents thereto.

12. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 2(g) of the Securities Purchase Agreement and any other restrictions that may be mutually agreed by the Company and the Holder hereof.

13. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 13(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 13(d)) to the Holder representing the outstanding Principal not being transferred.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below (each a “**Lost Note Affidavit**”) shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form, and reasonably acceptable to the Company and, if the note is converted in connection with the IPO, the Company’s managing underwriter, and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 13(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 13(d) and in principal amounts of at least \$1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 13(a) or Section 13(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal of this Note, from the Issuance Date.



14. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief); provided, the Holder or any Person claiming through or by right of Holder shall not be entitled to any duplication or multiplication of damages; provided further that the Company shall not be liable for incidental or consequential damages for any failure by the Company to comply with the terms of this Note even if the Company has been advised of the possibility thereof. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein or in the other Transaction Documents, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note (including, without limitation, compliance with Section 5).

15. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement of the debt evidenced hereby or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable attorneys' fees and disbursements.

16. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Terms used in this Note but defined in the other Transaction Documents shall have the meanings ascribed to such terms in such other Transaction Documents.

17. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

18. DISPUTE RESOLUTION. If at any time before conversion of this Note, the Holder and the Company are unable to agree as to the arithmetic calculation of the Conversion Price the Holder and the Company will confer in good faith to resolve such disagreement and the Company shall promptly issue upon conversion of this Note at the number of shares of Common Stock that are uncontested. Thereafter, the Company and Holder will confer in good faith to attempt to reach agreement regarding the Conversion Price with the Required Note Holders; if the Required Note Holders and the Company agree in writing upon a Conversion Price, that agreement will be binding on Holder and all holders of the Other Notes.

19. NOTICES; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) promptly, but in any event within ten (10) calendar days, upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record with respect to any dividend or distribution upon the Common Stock.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers (as defined in the Securities Purchase Agreement), which shall initially be the address set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

20. CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered promptly, but in any event within ten (10) calendar days, to the Company by the Holder for cancellation and shall not be reissued.

21. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note.

22. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of this Note. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

23. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(b) “**Change in Control**” means (x) the acquisition of the Company by another entity by means of any transaction (including, without limitation, any stock acquisition, reorganization, merger or consolidation) that contemplates an enterprise value of the Company of not less than \$75 million, or (y) a sale of all or substantially all of the assets of the Company for an aggregate purchase price of not less than \$75 million (including, for purposes of this section, the sale or exclusive license of intellectual property rights which, in the aggregate, constitutes substantially all of the corporation’s material intellectual property assets).

(c) “**Closing Date**” shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Notes pursuant to the terms of the Securities Purchase Agreement.

(d) “**Common Stock**” means (i) the Company’s shares of common stock, \$0.00001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(e) “**Conversion Amount**” means the sum of the outstanding and unpaid Principal plus all accrued and unpaid Interest thereon plus, if any, other unpaid amounts due under this Note.

(f) “**Financing**” means any debt or equity financing by the Company consummated prior to the IPO for the principal purpose of raising operating capital or paying off or paying down the Notes or any other indebtedness or trade payables of the Company. “**Financing**” shall not include the issuance of Common Stock or options to purchase Common Stock to employees, consultants, directors or other service providers with the principal purpose of providing an incentive to provide or continue to provide services to the Company.

(g) “**Financing Price**” means for any Financing the purchase price of the securities being sold by the Company in such Financing (as adjusted for stock splits, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5).

(h) “**GAAP**” means United States generally accepted accounting principles, consistently applied.

(i) “**IPO**” means a firm commitment underwritten initial public offering of the Company’s Common Stock pursuant to a registration statement filed on Form S-1 (or any successor from thereto) and declared effective by the SEC that raises gross proceeds of at least \$10 million, which is consummated prior to the Maturity Date.

(j) “**IPO Price to Public**” means the price to public specified in the IPO registration statement (as adjusted for stock splits, stock combinations, recapitalizations, or the like that occur after the Issuance Date in accordance with Section 5).

(k) “**Interest Rate**” means six percent (6%) per annum, as may be adjusted from time to time in accordance with Section 2.

(l) “**Maturity Date**” shall mean [July] [\_\_\_\_], 2014.

(m) “**New Subsidiary**” means, as of any date of determination, any Person in which the Company after the Closing Date, directly or indirectly, (i) owns or acquires any of the outstanding capital stock or holds any equity or similar interest of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person, and all of the foregoing, collectively, “**New Subsidiaries**.” “**New Subsidiary**” shall not include any Person in which the Company owns a non-controlling interest acquired as a result of a bona fide strategic partnership or other transaction that is not related to the financing of such Person by the Company or its affiliates (i.e., not for the principal purpose of raising operating capital for such Person) but only (A) if the Company does not have the right to designate one or more members of such Person’s board of directors or board of managers or similar body and (B) if the capital stock or equity or similar interest of such Person held directly or indirectly by the Company was not acquired directly or indirectly by the Company for cash.

(n) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(o) “**SEC**” means the United States Securities and Exchange Commission or the successor thereto.

(p) “**Securities Purchase Agreement**” means that certain securities purchase agreement, dated as of the Closing Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.

(q) “**Security Agreement**” means that certain security agreement, dated as of the Closing Date, by and among the Company and the initial holders of the Notes, as may be amended from time to time.

24. **MAXIMUM PAYMENTS.** Nothing contained in this Note shall, or shall be deemed to, establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges under this Note exceeds the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

25. **SURRENDER OR ACKNOWLEDGEMENT AND CERTIFICATION:** Upon payment in full or conversion of this Note, Holder shall surrender the original physical copy of this Note for cancellation; alternatively, if the Holder promptly requests in connection with such payment or conversion, the Holder may deliver to the Company a signed acknowledgement of payment in full and a certification that the Holder has cancelled or destroyed the Note in a form reasonably acceptable to the Company.

*[Signature page follows]*

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

**DVINEWAVE INC.**

By: \_\_\_\_\_

Name:

Title:

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**EXHIBIT I**

**DVINEWAVE INC.  
CONVERSION NOTICE**

Reference is made to the Senior Secured Convertible Note (the “**Note**”) issued to the undersigned by DvineWave Inc. (the “**Company**”). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of common stock, \$0.00001 par value per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion: \_\_\_\_\_

Aggregate Conversion Amount to be converted: \_\_\_\_\_

Conversion Price: \_\_\_\_\_

Number of shares of Common Stock to be issued: \_\_\_\_\_

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Holder: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT II**

**ACKNOWLEDGMENT**

The Company hereby acknowledges this Conversion Notice and hereby directs \_\_\_\_\_ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated \_\_\_\_\_, 20\_\_ from the Company and acknowledged and agreed to by \_\_\_\_\_.

**DVINEWAVE INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”), dated as of May 16, 2013, is made by and among DvineWave Inc., a Delaware corporation (the “**Grantor**”), and the secured parties listed on the signature pages hereof (collectively, the “**Secured Parties**” and each, individually, a “**Secured Party**”).

### RECITALS

**WHEREAS**, pursuant to that certain Securities Purchase Agreement, dated even date herewith (as may be amended, restated, supplemented, or otherwise modified from time to time, including all schedules and exhibits thereto, collectively, the “**Securities Purchase Agreement**”), by and among the Grantor and each of the Secured Parties, Grantor has agreed to sell, and each of the Secured Parties have each agreed to purchase, severally and not jointly, certain Notes; and

**WHEREAS**, in order to induce the Secured Parties to purchase, severally and not jointly, the Notes as provided for in the Securities Purchase Agreement, Grantor has agreed to grant a continuing security interest in and to the Collateral in order to secure the prompt and complete payment, observance and performance of the Secured Obligations (as defined below).

### AGREEMENT

**NOW, THEREFORE**, for and in consideration of the recitals made above and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Defined Terms.** All capitalized terms used herein (including in the preamble and recitals hereof) without definition shall have the meanings ascribed thereto in the Notes. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein or in the Notes; provided, however, if the Code is used to define any term used herein and if such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern. In addition to those terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the following meanings:

- (a) “**Account**” means an account (as that term is defined in the Code).
- (b) “**Account Debtor**” means an account debtor (as that term is defined in the Code).
- (c) “**Bankruptcy Code**” means Title 11 of the United States Code, as in effect from time to time.

(d) “**Books**” means books and records (including, without limitation, the Grantor’s Records) indicating, summarizing, or evidencing the Grantor’s assets (including the Collateral) or liabilities, the Grantor’s Records relating to its business operations (including, without limitation, stock ledgers) or financial condition, and the Grantor’s goods or General Intangibles related to such information.

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(e) **“Chattel Paper”** means chattel paper (as that term is defined in the Code) and includes tangible chattel paper and electronic chattel paper.

(f) **“Code”** means the New York Uniform Commercial Code, as in effect from time to time; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to any Secured Party’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term **“Code”** shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

(g) **“Collateral”** has the meaning specified therefor in Section 2.

(h) **“Commencement Notice”** means a written notice, given by any Secured Party to the other Secured Parties in accordance with the notice provisions set forth in the Securities Purchase Agreement, pursuant to which such Secured Party notifies the other Secured Parties of the existence of one or more Events of Default and of such Secured Party’s intent to commence the exercise of one or more of the remedies provided for under this Agreement with respect to all or any portion of the Collateral as a consequence thereof, which notice shall incorporate a reasonably detailed description of each Event of Default then existing and of the remedial action proposed to be taken.

(i) **“Commercial Tort Claims”** means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on **Schedule 1** attached hereto.

(j) **“Control Agreement”** means a control agreement, in form and substance satisfactory to the Secured Parties, executed and delivered by Grantor, one or more Secured Parties, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account), as may be amended, restated, supplemented, or otherwise modified from time to time.

(k) **“Copyrights”** means all copyrights and copyright registrations, and also includes (i) all reissues, continuations, extensions or renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of Grantor’s business symbolized by the foregoing or connected therewith, and (v) all of Grantor’s rights corresponding thereto throughout the world.

(l) **“Deposit Account”** means a deposit account (as that term is defined in the Code).

(m) **“Equipment”** means all equipment (as that term is defined in the Code) in all of its forms of the Grantor, wherever located, and including, without limitation, all machinery, apparatus, installation facilities and other tangible personal property, and all parts thereof and all accessions, additions, attachments, improvements, substitutions, replacements and proceeds thereto and therefor.

(n) **“Event of Default”** has the meaning specified therefor in the Notes.

(o) **“GAAP”** means United States generally accepted accounting principles, consistently applied.

(p) **“General Intangibles”** means general intangibles (as that term is defined in the Code) and, in any event, includes payment intangibles, contract rights, rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill, programming materials, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment under any royalty or licensing agreements (including Intellectual Property Licenses), infringement claims, commercial computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

(q) **“Governmental Authority”** means any domestic or foreign federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

(r) **“Insolvency Proceeding”** means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law or any equivalent laws in any other jurisdiction, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

(s) **“Intellectual Property”** means Patents, Copyrights, Trademarks, the goodwill associated with such Trademarks, trade secrets and customer lists, and Intellectual Property Licenses.

(t) **“Intellectual Property Licenses”** means rights under or interests in any patent, trademark, copyright or other intellectual property, including software license agreements with any other party, whether the applicable Grantor is a licensee or licensor under any such license agreement, as may be amended, restated, supplemented, or otherwise modified from time to time.

(u) **“Inventory”** means all inventory (as that term is defined in the Code) in all of its forms of the Grantor, wherever located, including, without limitation, (i) all goods in which the Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in which the Grantor has an interest or right as consignee), and (ii) all goods which are returned to or repossessed by the Grantor, and all accessions thereto, products thereof and documents therefor.

(v) **“Investment Related Property”** means (i) investment property (as that term is defined in the Code), and (ii) all of the following (regardless of whether classified as investment property under the Code): all Pledged Interests, Pledged Operating Agreements, and Pledged Partnership Agreements.

(w) **“Lien”** means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind.

(x) **“Negotiable Collateral”** means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts, and documents.

(y) **“New Subsidiary”** has the meaning specified therefor in the Notes.

(z) **“Notes”** has the meaning specified therefor in the Securities Purchase Agreement.

(aa) **“Patents”** means all patents and patent applications, and also includes (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of Grantor’s rights corresponding thereto throughout the world.

(bb) **“Permitted Liens”** (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent or that is being contested in good faith for which adequate reserves have been established in accordance with GAAP, (iii) any Lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that is being contested in good faith by appropriate proceedings, (iv) Liens in favor of a landlord which (other than with respect to a security deposits) are not prior in right to the Liens of Secured Parties, (v) Liens on Equipment having a fair market value of not more than \$500,000 in the aggregate, but only if the lien constitutes a purchase money security interest incurred in connection with the purchase of such Equipment or if the Equipment is leased to the Grantor pursuant to a capital lease, (v) judgment Liens that do not result in an “Event of Default” under Section 4(a)(vii) of the Notes, and (vi) Liens securing the Company’s obligations under the Transaction Documents.

(cc) **“Permitted Secured Party”** means, with respect to the exercise of any remedy provided for under this Agreement, (A) any Secured Party that has delivered a Commencement Notice with respect to the exercise of such remedy to the other Secured Parties and has not received a Veto Notice with respect thereto within the Veto Period or (B) any Significant Secured Party that has in connection with a Commencement Notice delivered a Veto Notice to a Secured Party within the Veto Period; provided, however, there shall only be a single Permitted Secured Party that may exercise any specific remedy at any one time (it being agreed that if a Commencement Notice is delivered by more than one Secured Party with respect to any remedy provided for under this Agreement, then the first Secured Party to deliver a Commencement Notice and not receive a Veto Notice within the Veto Period shall be the only Secured Party that may exercise such remedy).

(dd) **“Permitted Transfers”** means (i) sales of Inventory in the ordinary course of business, (ii) licenses in the ordinary course of business that either terminate on or prior to the Maturity Date or with the express written consent of MDB Capital Group LLC terminate subsequent to the Maturity Date for the use of Intellectual Property (A) to manufacturers, distributors, OEMs, strategic partners and value added re-sellers in connection with the manufacture and distribution of Grantor’s products, (B) in connection with the embedding of Intellectual Property in the products of others, and (C) to end users; provided no such license could result in a legal transfer of title of the licensed Intellectual Property, or (iii) dispositions of worn-out, obsolete or surplus Equipment at fair market value in the ordinary course of business.

(ee) **“Person”** has the meaning specified therefor in the Securities Purchase Agreement.

(ff) **“Pledged Companies”** means each Person all or a portion of whose Stock is acquired or otherwise owned by the Grantor after the date hereof.

(gg) **“Pledged Interests”** means all of Grantor’s right, title and interest in and to all of the Stock now or hereafter owned by Grantor, regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Stock, the right to receive any certificates representing any of the Stock, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing.

(hh) **“Pledged Operating Agreements”** means all of Grantor’s rights, powers, and remedies under the limited liability company operating agreements of each of the Pledged Companies that are limited liability companies, as may be amended, restated, supplemented, or otherwise modified from time to time.

(ii) **“Pledged Partnership Agreements”** means all of Grantor’s rights, powers, and remedies under the partnership agreements of each of the Pledged Companies that are partnerships, as may be amended, restated, supplemented, or otherwise modified from time to time.

(jj) **“Proceeds”** has the meaning specified therefor in Section 2.

(kk) **“Real Property”** means any estates or interests in real property now owned or hereafter acquired by Grantor and the improvements thereto.

(ll) **“Records”** means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(mm) **“Secured Obligations”** mean all of the present and future payment and performance obligations of Grantor arising under this Agreement, the Notes and the other Transaction Documents, including, without duplication, reasonable attorneys’ fees and expenses and any interest, fees, or expenses that accrue after the filing of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any Insolvency Proceeding.

(nn) **“Securities Account”** means a securities account (as that term is defined in the Code).

(oo) **“Security Documents”** means, collectively, this Agreement, each Control Agreement and each other security agreement, pledge agreement, assignment, mortgage, security deed, deed of trust, and other agreement or document executed and delivered by the Grantor as security for any of the Secured Obligations, as may be amended, restated, supplemented, or otherwise modified from time to time.

(pp) **“Security Interest”** and **“Security Interests”** have the meanings specified therefor in Section 2.

(qq) **“Significant Secured Party”** means, on any date of determination, one or more Secured Parties holding alone or in the aggregate fifteen percent (15%) or more of the aggregate principal amount of Notes outstanding on such date.

(rr) **“Stock”** means all shares, options, warrants, interests (including, without limitation, membership and partnership interests), participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the United States Securities and Exchange Commission and any successor thereto under the Securities Exchange Act of 1934, as in effect from time to time).

(ss) **“Supporting Obligations”** means supporting obligations (as such term is defined in the Code).

(tt) **“Trademarks”** means all trademarks, trade names, trademark applications, service marks, service mark applications, and also includes (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of Grantor’s business symbolized by the foregoing or connected therewith, and (v) all of Grantor’s rights corresponding thereto throughout the world.

(uu) **“Transaction Documents”** has the meaning specified therefor in the Securities Purchase Agreement.

(vv) **“URL”** means “uniform resource locator,” an internet web address.

(ww) **“Veto Notice”** means, with respect to any Commencement Notice, a written notice given by any Significant Secured Party to the other Secured Parties in accordance with the notice provisions set forth in the Securities Purchase Agreement pursuant to which such Significant Secured Party notifies the other Secured Parties of its objection to the commencement of the remedial action specified in such Commencement Notice and certifies that, to the best of its knowledge, it is a Significant Secured Party.

(xx) **“Veto Period”** means, with respect to any Commencement Notice, the period of ten (10) consecutive calendar days following the delivery of such Commencement Notice to the Secured Parties.

2. Grant of Security. The Grantor hereby unconditionally grants, assigns, and pledges to each Secured Party a separate, continuing security interest (each, a **“Security Interest”** and, collectively, the **“Security Interests”**) in all assets of the Grantor whether now owned or hereafter acquired or arising and wherever located (collectively, the **“Collateral”**), including, without limitation, the Grantor’s right, title, and interest in and to the following, whether now owned or hereafter acquired or arising and wherever located:

- (a) all of the Grantor’s Accounts;
- (b) all of the Grantor’s Books;
- (c) all of the Grantor’s Chattel Paper;
- (d) all of the Grantor’s Deposit Accounts;
- (e) all of the Grantor’s Equipment and fixtures;
- (f) all of the Grantor’s General Intangibles;
- (g) all of the Grantor’s Intellectual Property;

- (h) all of the Grantor's Inventory;
- (i) all of the Grantor's Investment Related Property;
- (j) all of the Grantor's Negotiable Collateral;
- (k) all of the Grantor's Real Property;
- (l) all of the Grantor's rights in respect of Supporting Obligations;
- (m) all of the Grantor's Commercial Tort Claims;
- (n) all of the Grantor's money, cash, cash equivalents, or other assets of the Grantor that now or hereafter come into the possession, custody, or control of any Secured Party; and

(o) all of the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, General Intangibles, Intellectual Property, Inventory, Investment Related Property, Negotiable Collateral, Real Estate, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the "**Proceeds**"). Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to the Grantor or any Secured Party from time to time with respect to any of the Investment Related Property.

3. Security for Obligations. This Agreement and the Security Interests created hereby secure the payment and performance of the Secured Obligations, whether now existing or arising hereafter.

4. Grantor Remains Liable. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under the contracts and agreements included in the Collateral, including the Pledged Operating Agreements and the Pledged Partnership Agreements, to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Secured Parties, or any of them, of any of the rights hereunder shall not release the Grantor from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) no Secured Party shall have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall any Secured Party be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. Until an Event of Default shall occur and be continuing, except as otherwise provided in this Agreement or any other Transaction Document, the Grantor shall have the right to possession and enjoyment of the Collateral for the purpose of conducting the ordinary course of its businesses, subject to and upon the terms hereof and the other Transaction Documents. Without limiting the generality of the foregoing, it is the intention of the parties hereto that record and beneficial ownership of the Pledged Interests, including all voting, consensual, and dividend rights, shall remain in the Grantor until the occurrence of an Event of Default and until any Secured Party shall notify the Grantor of such Secured Party's exercise of voting, consensual, or dividend rights with respect to the Pledged Interests pursuant to Section 15 hereof.

5. Representations and Warranties. The Grantor hereby represents and warrants as follows:

(a) The exact legal name of the Grantor is set forth in the preamble this Agreement.

(b) Schedule 2 attached hereto sets forth (i) all Real Property owned or leased by the Grantor, together with all other locations of Collateral, as of the date hereof, and (ii) the chief executive office of the Grantor as of the date hereof.

(c) This Agreement creates a valid security interest in all of the Collateral of the Grantor, to the extent a security interest therein can be created under the Code, securing the payment of the Secured Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements listing the Grantor, as a debtor, and Secured Parties, as secured parties, in the jurisdictions listed on Schedule 3 attached hereto. Upon the making of such filings, Secured Parties shall each have a first priority perfected security interest in all of the Collateral of the Grantor to the extent such security interest can be perfected by the filing of a financing statement. All action by the Grantor necessary to protect and perfect such security interest on each item of Collateral has been duly taken.

(d) Except for the Security Interests created hereby, no Collateral is subject to any Lien as of the date hereof other than Permitted Liens.

(e) No consent, approval, authorization, or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (i) for the grant of a Security Interest by the Grantor in and to the Collateral pursuant to this Agreement or for the execution, delivery, or performance of this Agreement by the Grantor, or (ii) for the exercise by any Secured Party of the voting or other rights provided in this Agreement with respect to Investment Related Property pledged hereunder or the remedies in respect of the Collateral pursuant to this Agreement, except as may be required in connection with such disposition of Investment Related Property by laws affecting the offering and sale of securities generally.



(f) Schedule 4 contains a complete and accurate list of all of the Grantor's Deposit Accounts and Securities Accounts, including, without limitation, with respect to each bank or securities intermediary (a) the name and address of such Person and (b) the account numbers of such accounts maintained with such Person.

6. Covenants. The Grantor covenants and agrees with each Secured Party that from and after the date of this Agreement and until the date of termination of this Agreement in accordance with Section 24 hereof:

(a) Possession of Collateral. In the event that any Collateral with a value in excess of \$25,000 individually or \$100,000 in the aggregate, including proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, and if and to the extent that perfection or priority of Secured Parties' respective Security Interests is dependent on or enhanced by possession, the Grantor, immediately upon the request of any Secured Party, shall execute such other documents and instruments as shall be requested by such Secured Party or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to such Secured Party, together with such undated powers endorsed in blank as shall be requested by such Secured Party, and do such other acts or things deemed reasonably necessary or desirable by such Secured Party to protect the Secured Party's Security Interests therein.

(b) Chattel Paper.

(i) Subject to the materiality threshold set forth in Section 6(a), the Grantor shall take all steps reasonably necessary to grant each Secured Party control of all Chattel Paper in accordance with the Code and with respect to any such electronic Chattel Paper all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Purchase Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction; and

(ii) If the Grantor retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby and by the Securities Purchase Agreement), promptly upon the request of any Secured Party, such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interests of [names of Secured Parties]."

(c) Control Agreements. The Grantor shall not establish or maintain any Deposit Account or Securities Account (or any other similar account) unless (i) except with respect to Certificates of Deposit of the bank with which Grantor maintains its primary banking relationship, the Grantor shall have provided each Secured Party with ten (10) days' advance written notice of each such account except for payroll accounts and other accounts that shall in the case of other accounts at no time hold in excess of \$25,000 individually or \$100,000 in the aggregate, and (ii) if an Event of Default has occurred and is then continuing, the Secured Parties shall have received a Control Agreement in respect of such account concurrently with the opening thereof. From and after the occurrence of any Event of Default, the Grantor shall ensure that all of its Account Debtors forward payment of the amounts owed by them directly to a Deposit Account that is subject to a Control Agreement and deposit or cause to be deposited promptly, and in any event no later than the first (1<sup>st</sup>) Business Day after the date of receipt thereof, all of their collections (including those sent directly by their Account Debtors to the Grantor) into a Deposit Account subject to a Control Agreement. Upon the request of any Secured Party from and after the occurrence of any Event of Default, the Grantor shall promptly (but in no event later than five (5) Business Days after such request therefor) cause each of its Deposit Accounts and Securities Accounts to be subject to a Control Agreement in favor of the Secured Parties.

(d) Letter-of-Credit Rights. In the event that the Grantor is or becomes the beneficiary of one or more letters of credit with a face amount of greater than \$25,000 individually or \$100,000 in the aggregate, the Grantor shall promptly (and in any event within five (5) Business Days after becoming a beneficiary) notify the Secured Parties thereof and, upon the request by any Secured Party, enter into a multi-party agreement with the Secured Parties and the issuing or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to the Secured Parties and directing all payments thereunder to the Secured Parties, all in form and substance satisfactory to the Secured Parties.

(e) Commercial Tort Claims. The Grantor shall promptly (and in any event within five (5) Business Days of receipt thereof) notify the Secured Parties in writing upon incurring or otherwise obtaining a Commercial Tort Claim after the date hereof and, upon request of any Secured Party, promptly amend Schedule 1 to this Agreement to describe such after-acquired Commercial Tort Claim in a manner that reasonably identifies such Commercial Tort Claim, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by any Secured Party to give the Secured Parties a first priority, perfected security interest in any such Commercial Tort Claim.

(f) Government Contracts. If any Account or Chattel Paper arises out of a contract or contracts with the United States of America or any department, agency, or instrumentality thereof, the Grantor shall promptly (and in any event within five (5) Business Days of the creation thereof) notify the Secured Parties thereof in writing and execute any instruments or take any steps reasonably required by any Secured Party in order that all moneys due or to become due under such contract or contracts shall be assigned to the Secured Parties, and shall provide written notice thereof and take all other appropriate actions under the Assignment of Claims Act or other applicable law to provide each Secured Party a first-priority perfected security interest in such contract.

(g) Investment Related Property.

(i) If the Grantor shall receive or become entitled to receive any Pledged Interests after the date hereof, it shall promptly (and in any event within two (2) Business Days of receipt thereof) identify such Pledged Interests in a written notice to the Secured Parties;

(ii) During the existence of an Event of Default all sums of money and property paid or distributed in respect of the Investment Related Property pledged hereunder which are received by the Grantor shall be held by the Grantor in trust for the benefit of the Secured Parties segregated from the Grantor's other property, and the Grantor shall deliver it forthwith to the Secured Parties in the exact form received;

(iii) The Grantor shall promptly deliver to the Secured Parties a copy of each notice or other communication received by it in respect of any Pledged Interests;

(iv) The Grantor shall not make or consent to any material amendment or other modification or waiver with respect to any Pledged Interests, Pledged Operating Agreement, or Pledged Partnership Agreement, or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests;

(v) The Grantor agrees that it will cooperate with the Secured Parties in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law in connection with the Security Interests on the Investment Related Property pledged hereunder or any sale or transfer thereof; and

(vi) As to all limited liability company or partnership interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, the Grantor hereby represents, warrants and covenants that the Pledged Interests issued pursuant to such agreement (A) shall not be dealt in or traded on securities exchanges or in securities markets, (B) will not constitute investment company securities, and (C) will not be held by the Grantor in a securities account. In addition, none of the Pledged Operating Agreements, the Pledged Partnership Agreements, or any other agreements governing any of the Pledged Interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, shall provide that such Pledged Interests are securities governed by Article 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction.

(h) Transfers and Other Liens. The Grantor shall not (i) sell, lease, license, assign (by operation of law or otherwise), transfer or otherwise dispose of, or grant any option with respect to, any of the Collateral, except for Permitted Transfers or as expressly permitted by this Agreement and the other Transaction Documents, or (ii) except for Permitted Liens, create or permit to exist any Lien upon or with respect to any of the Collateral without the consent of Secured Parties holding at least a majority of the aggregate principal amount of the then outstanding Notes. The inclusion of Proceeds in the Collateral shall not be deemed to constitute consent by any Secured Party to any sale or other disposition of any of the Collateral except as expressly permitted in this Agreement or the other Transaction Documents. Notwithstanding anything contained in this Agreement to the contrary, Permitted Liens shall not be permitted with respect to any Pledged Interests.

(i) Preservation of Existence. The Grantor shall maintain and preserve its existence, rights and privileges, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(j) Maintenance of Properties. The Grantor shall maintain and preserve all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(k) Maintenance of Insurance. The Grantor shall maintain insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, property, hazard, rent and business interruption insurance) with respect to all of its assets and properties (including, without limitation, all real properties leased or owned by it and any and all Inventory and Equipment) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated, in each case, reasonably acceptable to the Secured Parties.

(l) Other Actions as to Any and All Collateral. The Grantor shall promptly (and in any event within five (5) Business Days of acquiring or obtaining such Collateral) notify the Secured Parties in writing upon (i) acquiring or otherwise obtaining any Collateral after the date hereof consisting of Investment Related Property, Chattel Paper (electronic, tangible or otherwise), documents (as defined in Article 9 of the Code), promissory notes (as defined in the Code) or instruments (as defined in the Code) or (ii) any amount payable under or in connection with any of the Collateral being or becoming evidenced after the date hereof by any Chattel Paper, documents, promissory notes, or instruments.

7. Relation to Other Transaction Documents. In the event of any conflict between any provision in this Agreement and any provision in the Securities Purchase Agreement or Notes, such provision of the Securities Purchase Agreement or Notes shall control, except to the extent the applicable provision in this Agreement is more restrictive with respect to the rights of the Grantor or imposes more burdensome or additional obligations on the Grantor, in which event the applicable provision in this Agreement shall control.

8. Further Assurances.

(a) The Grantor agrees that from time to time, at its own expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that any Secured Party may reasonably request, in order to perfect and protect the Security Interests granted or purported to be granted hereby or to enable any Secured Party to exercise and enforce its rights and remedies hereunder with respect to any of the Collateral.

(b) The Grantor authorizes the filing by any Secured Party of financing or continuation statements, or amendments thereto, including, but limited to, the recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the United States Patent and Trademark Office and the United States Copyright Office, and Grantor will execute and deliver to such Secured Party such other instruments or notices, as may be necessary or as such Secured Party may reasonably request, in order to perfect and preserve the Security Interests granted or purported to be granted hereby. Upon the Satisfaction in Full of the Secured Obligations, each Secured Party shall (at Grantor' expense) file a termination statement and/or other necessary documents terminating and releasing any and all financing statements or Liens on the Collateral pursuant to Section 24 within five (5) Business Days following a written request therefor from Grantor.

(c) The Grantor authorizes any Secured Party at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as "all real and personal property of debtor" or "all assets of debtor" or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance. The Grantor also hereby ratifies any and all financing statements or amendments previously filed by any Secured Party in any jurisdiction.

(d) The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of each Secured Party affected thereby, subject to the Grantor's rights under Section 9-509(d)(2) of the Code.

(e) Upon one (1) Business Day's advance notice, the Grantor shall permit each Secured Party or its employees, accountants, attorneys or agents, access to examine and inspect any Collateral or any other property of the Grantor at any time during ordinary business hours.

9. Secured Parties' Right to Perform Contracts, Exercise Rights, etc. Upon the occurrence and during the continuance of an Event of Default, any Secured Party (a) may proceed to perform any and all of the obligations of the Grantor contained in any contract, lease, or other agreement and exercise any and all rights of the Grantor therein contained as fully as the Grantor itself could, (b) shall have the right to use the Grantor's rights under Intellectual Property Licenses in connection with the enforcement of the Secured Party's rights hereunder, including the right to prepare for sale and sell any and all Inventory and Equipment now or hereafter owned by the Grantor and now or hereafter covered by such licenses, and (c) shall have the right to request that any Stock that is pledged hereunder be registered in the name of such Secured Party or any of its nominees.

10. Secured Parties Appointed Attorney-in-Fact. The Grantor, on behalf of itself and each New Subsidiary of the Grantor, hereby irrevocably appoints each Secured Party as the attorney-in-fact of the Grantor and each such New Subsidiary, upon the occurrence and during the continuance of an Event of Default, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement. In the event the Grantor or any New Subsidiary fails to execute or deliver in a timely manner any Transaction Document or other agreement, document, certificate or instrument which the Grantor or New Subsidiary now or at any time hereafter is required to execute or deliver pursuant to the terms of the Securities Purchase Agreement or any other Transaction Document, upon the occurrence and during the continuance of an Event of Default, each Secured Party shall have full authority in the place and stead of the Grantor or New Subsidiary, and in the name of the Grantor, such New Subsidiary or otherwise, to execute and deliver each of the foregoing. Without limitation of the foregoing, upon the occurrence and during the continuance of an Event of Default, each Secured Party shall have full authority in the place and stead of the Grantor and each New Subsidiary, and in the name of any the Grantor, any such New Subsidiary or otherwise, to take any action and to execute any instrument which such Secured Party may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with any Collateral of the Grantor or New Subsidiary;

(b) to receive and open all mail addressed to the Grantor or New Subsidiary and to notify postal authorities to change the address for the delivery of mail to the Grantor or New Subsidiary to that of such Secured Party (provided such Secured Party shall promptly provide a copy of all such mail to the Grantor);

(c) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(d) to file any claims or take any action or institute any proceedings which such Secured Party may deem necessary or desirable for the collection of any of the Collateral of the Grantor or New Subsidiary or otherwise to enforce the rights of any Secured Party with respect to any of the Collateral; and

(e) to use any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, customer lists, advertising matter or other industrial or intellectual property rights, in advertising for the exclusive purpose of sale and selling Inventory and other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of the Grantor or New Subsidiary.

To the extent permitted by law, the Grantor hereby ratifies, for itself and each New Subsidiary, all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Such power-of-attorney granted pursuant to this Section 10 is coupled with an interest and shall be irrevocable until this Agreement is terminated.

11. Secured Parties May Perform. If the Grantor fails to perform any agreement contained herein, upon the occurrence and during the continuance of an Event of Default any Secured Party may itself perform, or cause performance of, such agreement, and the reasonable expenses of such Secured Party incurred in connection therewith shall be payable by the Grantor.

12. Secured Parties' Duties; Bailee for Perfection. The powers conferred on Secured Parties hereunder are solely to protect the Secured Parties' respective interests in the Collateral and shall not impose any duty upon any Secured Party in favor of the Grantor or any other Secured Party to exercise any such powers. Except for the safe custody of any Collateral in its actual possession and the accounting for moneys actually received by it hereunder and except as provided in the Code, no Secured Party shall have any duty to the Grantor or any other Secured Party as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. A Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its actual possession if such Collateral is accorded treatment substantially equal to that which such Secured Party accords its own property. Each Secured Party agrees that, with respect to any Collateral at any time or times in its possession and in which any other Secured Party has a Lien, the Secured Party in possession of any such Collateral shall be the bailee of each other Secured Party solely for purposes of perfecting (to the extent not otherwise perfected) each other Secured Party's Lien in such Collateral, provided that no Secured Party shall be obligated to obtain or retain possession of any such Collateral. Without limiting the generality of the foregoing, the Secured Parties and the Grantor hereby agree that any Secured Party that is in possession of any Collateral at such time as the Secured Obligations owing to such Secured Party have been paid in full may re-deliver such Collateral to the Grantor or, if requested by any Secured Party prior to such re-delivery, may deliver such Collateral (unless otherwise restricted by applicable law or court order and subject in all events to the receipt of an indemnification of all liabilities arising from such delivery) to the requesting Secured Party, without recourse to or representation or warranty by the Secured Party in such possession.

13. Collection of Accounts, General Intangibles and Negotiable Collateral. At any time upon the occurrence and during the continuation of an Event of Default, any Secured Party may (a) notify Account Debtors of the Grantor that the Accounts, General Intangibles, Chattel Paper or Negotiable Collateral have been assigned to such Secured Party or that such Secured Party has a security interest therein, and (b) collect the Accounts, General Intangibles and Negotiable Collateral directly, and any collection costs and expenses shall constitute part of the Secured Obligations.

14. Disposition of Pledged Interests by Secured Party. None of the Pledged Interests hereafter acquired on the date of acquisition thereof will be registered or qualified under the various federal, state or other securities laws of the United States or any other jurisdiction, and disposition thereof after an Event of Default may be restricted to one or more private (instead of public) sales in view of the lack of such registration. The Grantor understands that in connection with such disposition, any Secured Party may approach only a restricted number of potential purchasers and further understands that a sale under such circumstances may yield a lower price for the Pledged Interests than if the Pledged Interests were registered and qualified pursuant to federal, state and other securities laws and sold on the open market. The Grantor, therefore, agrees that: (a) if a Secured Party shall, pursuant to the terms of this Agreement, sell or cause the Pledged Interests or any portion thereof to be sold at a private sale, such Secured Party shall have the right to rely upon the advice and opinion of any nationally recognized brokerage or investment firm (but shall not be obligated to seek such advice and the failure to do so shall not be considered in determining the commercial reasonableness of such action) as to the best manner in which to offer the Pledged Interest or any portion thereof for sale and as to the best price reasonably obtainable at the private sale thereof; and (b) such reliance shall be conclusive evidence that such Secured Party has handled the disposition in a commercially reasonable manner.

15. Voting Rights.

(a) Upon the occurrence and during the continuation of an Event of Default, (i) any Secured Party may, at its option, and with two (2) Business Days prior notice to the Grantor, and in addition to all rights and remedies available to the Secured Parties under any other agreement, at law, in equity, or otherwise, exercise all voting rights, and all other ownership or consensual rights in respect of the Pledged Interests, but under no circumstances is any Secured Party obligated by the terms of this Agreement to exercise such rights, and (ii) if such Secured Party duly exercises its right to vote any of such Pledged Interests, the Grantor hereby appoints such Secured Party as the Grantor's true and lawful attorney-in-fact and IRREVOCABLE PROXY to vote such Pledged Interests in any manner that such Secured Party deems advisable for or against all matters submitted or which may be submitted to a vote of shareholders, partners or members, as the case may be. Such power-of-attorney granted pursuant to this Section 15 is coupled with an interest and shall be irrevocable until this Agreement is terminated.

(b) For so long as the Grantor shall have the right to vote the Pledged Interests, it covenants and agrees that it will not, without the prior written consent of the Secured Parties, vote or take any consensual action with respect to such Pledged Interests which would materially or adversely affect the rights of the Secured Parties exercising the voting rights owned by the Grantor or the value of the Pledged Interests.



16. Remedies. Upon the occurrence and during the continuance of an Event of Default:

(a) Any Secured Party may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein, in the other Transaction Documents, or otherwise available to it, all the rights and remedies of a secured party on default under the Code or any other applicable law. Without limiting the generality of the foregoing, the Grantor expressly agrees that, in any such event, any Secured Party without any demand, advertisement, or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon the Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or by any other applicable law), may take immediate possession of all or any portion of the Collateral and (i) require the Grantor to, and the Grantor hereby agrees that it will at its own expense and upon request of such Secured Party forthwith, assemble all or part of the Collateral as directed by such Secured Party and make it available to such Secured Party at one or more locations where the Grantor regularly maintains Inventory, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of such Secured Party's offices or elsewhere, for cash, on credit, and upon such other terms as such Secured Party may deem commercially reasonable. The Grantor agrees that, to the extent notice of sale shall be required by law, at least 10 days' notice of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and specifically such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. No Secured Party shall be obligated to make any sale of Collateral regardless of notice of sale having been given. Any Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Each Secured Party is hereby granted a non-exclusive license or other right to use, without liability for royalties or any other charge, the Grantor's labels, Patents, Copyrights, rights of use of any name, trade secrets, trade names, Trademarks, service marks and advertising matter, URLs, domain names, industrial designs, other industrial or intellectual property or any property of a similar nature, whether owned by the Grantor or with respect to which the Grantor has rights under license, sublicense, or other agreements (but only to the extent (i) such license, sublicense or agreement does not prohibit such use by such Secured Party, and (ii) the Grantor will not be in default under such license, sublicense, or other agreement as a result of such use by such Secured Party), as it pertains to the Collateral, for the exclusive purpose of preparing for sale, advertising for sale and effectuating the sale of any Collateral, and the Grantor's rights under all licenses and all franchise agreements shall inure to the benefit of such Secured Party.

(c) Any cash held by any Secured Party as Collateral and all proceeds received by any Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Secured Obligations in the order set forth in Section 17 hereof. In the event the proceeds of Collateral are insufficient for the Satisfaction in Full of the Secured Obligations (as defined below), the Grantor shall remain jointly and severally liable for any such deficiency.

(d) The Grantor hereby acknowledges that the Secured Obligations arose out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing any Secured Party shall have the right to an immediate writ of possession without notice of a hearing. Each Secured Party shall have the right to the appointment of a receiver for the properties and assets of the Grantor, and the Grantor hereby consents to such rights and such appointment and hereby waives any objection it may have thereto or the right to have a bond or other security posted by any Secured Party.

(e) Notwithstanding anything in this Agreement to the contrary, each Secured Party agrees that it will not exercise any remedy provided for under this Agreement with respect to all or any portion of the Collateral unless such Secured Party is a Permitted Secured Party (provided that the foregoing shall not prevent any Secured Party from commencing or participating in any Insolvency Proceeding or taking any action (other than with respect to the Collateral) to enforce the payment or performance of the Grantor's obligations under any of the Notes or other Transaction Documents). This Section 16(e) is not intended to confer any rights or benefits upon the Grantor or any other Person except Secured Parties, and no Person (including the Grantor) other than the Secured Parties shall have any right to enforce any of the provisions of this Section 16(e). As between the Grantor and any Secured Party, any action that such Secured Party may take under this Agreement shall be conclusively presumed to have been authorized and approved by the other Secured Parties.

(f) Each Secured Party may, in addition to other rights and remedies provided for herein, in the other Transaction Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon the Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to the Grantor's Deposit Accounts in which any such Secured Party's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the Grantor to pay the balance of such Deposit Account to or for the benefit of such Secured Party, and (ii) with respect to the Grantor's Securities Accounts in which such Secured Party's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the Grantor to (A) transfer any cash in such Securities Account to or for the benefit of such Secured Party, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of such Secured Party.

17. Priority of Liens; Application of Proceeds of Collateral. Each Secured Party hereby acknowledges and agrees that, notwithstanding the time or order of the filing of any financing statement or other registration or document with respect to the Collateral and the Security Interests, or any provision of this Agreement, any other Security Document, the Code or other applicable law, solely as amongst the Secured Parties, the separate Security Interests of the Secured Parties shall have the same rank and priority; provided, that, the foregoing shall not apply to any Security Interest of a Secured Party that is void or voidable as a matter of law. In furtherance thereof, all proceeds of Collateral received by any Secured Party shall be applied as follows:

(a) first, ratably to pay any expenses due to any of the Secured Parties (including, without limitation, the reasonable costs and expenses paid or incurred by any Secured Party to correct any default under or enforce any provision of the Transaction Documents, or after the occurrence of any Event of Default in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated) or indemnities then due to any of the Secured Parties under the Transaction Documents, until paid in full;

(b) second, ratably to pay any fees or premiums then due to any of the Secured Parties under the Transaction Documents, until paid in full;

(c) third, ratably to pay interest due in respect of the Secured Obligations then due to any of the Secured Parties, until paid in full;

(d) fourth, ratably to pay the principal amount of all Secured Obligations then due to any of the Secured Parties, until paid in full;

(e) fifth, ratably to pay any other Secured Obligations then due to any of the Secured Parties; and

(f) sixth, to Grantor or such other Person entitled thereto under applicable law.

18. Remedies Cumulative. Each right, power, and remedy of any Secured Party as provided for in this Agreement or in any other Transaction Document or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or in the other Transaction Documents or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by any Secured Party, of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by such Secured Party of any or all such other rights, powers, or remedies. The Grantor acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to each Secured Party and that the remedy at law for any such breach may be inadequate. The Grantor therefore agrees that, in the event of any breach or any threatened breach, each Secured Party shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required.

19. Marshaling. No Secured Party shall be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of any Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Grantor hereby irrevocably waives the benefits of all such laws.

20. Acknowledgment.

(a) Each Secured Party hereby agrees and acknowledges that no other Secured Party has agreed to act for it as an administrative or collateral agent, and each Secured Party is and shall remain solely responsible for the attachment, perfection and priority of all Liens created by this Agreement or any other Security Document in favor of such Secured Party. No Secured Party shall have by reason of this Agreement or any other Transaction Document an agency or fiduciary relationship with any other Secured Party. No Secured Party (which term, as used in this sentence, shall include reference to each Secured Party's officers, directors, employees, attorneys, agents and affiliates and to the officers, directors, employees, attorneys and agents of such Secured Party's affiliates) shall: (i) have any duties or responsibilities except those expressly set forth in this Agreement and the other Security Documents or (ii) be required to take, initiate or conduct any enforcement action (including any litigation, foreclosure or collection proceedings hereunder or under any of the other Security Documents). Without limiting the foregoing, no Secured Party shall have any right of action whatsoever against any other Secured Party as a result of such Secured Party acting or refraining from acting hereunder or under any of the Security Documents except as a result and to the extent of losses caused by such Secured Party's actual gross negligence or willful misconduct (it being understood and agreed by each Secured Party that the delivery by any Significant Secured Party of one or more Veto Notices shall not be deemed to be or construed as gross negligence or willful misconduct on the part of the Secured Party delivering any such Veto Notice). No Secured Party assumes any responsibility for any failure or delay in performance or breach by the Grantor or any other Secured Party of its obligations under this Agreement or any other Transaction Document. No Secured Party makes to any other Secured Party any express or implied warranty, representation or guarantee with respect to any Secured Obligations, Collateral, Transaction Document or the Grantor. No Secured Party nor any of its officers, directors, employees, attorneys or agents shall be responsible to any other Secured Party or any of its officers, directors, employees, attorneys or agents for: (i) any recitals, statements, information, representations or warranties contained in any of the Transaction Documents or in any certificate or other document furnished pursuant to the terms hereof; (ii) the execution, validity, genuineness, effectiveness or enforceability of any of the Transaction Documents; (iii) the validity, genuineness, enforceability, collectability, value, sufficiency or existence of any Collateral, or the attachment, perfection or priority of any Lien therein; or (iv) the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of the Grantor or any Account Debtor. No Secured Party nor any of its officers, directors, employees, attorneys or agents shall have any obligation to any other Secured Party to ascertain or inquire into the existence of any default or Event of Default, the observance or performance by the Grantor of any of its duties or agreements under any of the Transaction Documents or the satisfaction of any conditions precedent contained in any of the Transaction Documents.

(b) Each Secured Party hereby acknowledges and represents that it has, independently and without reliance upon any other Secured Party, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of the Grantor and its own decision to enter into the Transaction Documents and to purchase the Notes, and each Secured Party has made such inquiries concerning the Transaction Documents, the Collateral and the Grantor as such Secured Party feels necessary and appropriate, and has taken such care on its own behalf as would have been the case had it entered into the Transaction Documents without any other Secured Party. Each Secured Party hereby further acknowledges and represents that the other Secured Parties have not made any representations or warranties to it concerning the Grantor, any of the Collateral or the legality, validity, sufficiency or enforceability of any of the Transaction Documents. Each Secured Party also hereby acknowledges that it will, independently and without reliance upon the other Secured Parties, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in taking or refraining to take any other action under this Agreement or the Transaction Documents. No Secured Party shall have any duty or responsibility to provide any other Secured Party with any notices, reports or certificates furnished to such Secured Party by the Grantor or any credit or other information concerning the affairs, financial condition, business or assets of the Grantor (or any of its affiliates) which may come into possession of such Secured Party.

21. Indemnity and Expenses.

(a) Without limiting any obligations of the Grantor under the Securities Purchase Agreement, the Grantor agrees to indemnify all Secured Parties from and against all claims, lawsuits and liabilities (including reasonable attorneys' fees) arising out of or resulting from this Agreement (including enforcement of this Agreement) or any other Transaction Document, except claims, losses or liabilities resulting from the gross negligence or willful misconduct of the party seeking indemnification as determined by a final non-appealable order of a court of competent jurisdiction. This provision shall survive the termination of this Agreement and the Transaction Documents and the Satisfaction in Full of the Secured Obligations.

(b) The Grantor shall, upon demand, pay to each Secured Party all of the reasonable costs and expenses which such Secured Party may incur in connection with (i) the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Transaction Documents, (ii) the exercise or enforcement of any of the rights of such Secured Party hereunder or (iii) the failure by the Grantor to perform or observe any of the provisions hereof.

22. Merger, Amendments; Etc. THIS AGREEMENT, TOGETHER WITH THE OTHER TRANSACTION DOCUMENTS, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES SOLELY WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES. No provision of this Agreement may be amended other than by an instrument in writing signed by the Grantor and Secured Parties holding at least a majority of the aggregate principal amount of the then outstanding Notes, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 22 shall be binding on all Secured Parties, provided that no such amendment shall be effective to the extent that it (a) applies to less than all of the Secured Parties or (b) imposes any obligation or liability on any Secured Party without such Secured Party's prior written consent (which may be granted or withheld in such Secured Party's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that all of the single Significant Secured Parties (in a writing signed by all such Significant Secured Parties) may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 22 shall be binding on all Secured Parties, provided that no such waiver shall be effective to the extent that it (i) applies to less than all the Secured Parties (unless a party gives a waiver as to itself only) or (ii) imposes any obligation or liability on any Secured Party without such Secured Party's prior written consent (which may be granted or withheld in such Secured Party's sole discretion).

23. Addresses for Notices. All notices and other communications provided for hereunder (a) shall be given in the form and manner set forth in the Securities Purchase Agreement and (b) shall be delivered, (i) in the case of notice to the Grantor, by delivery of such notice to the Grantor's address specified in the Securities Purchase Agreement or at such other address as shall be designated by the Grantor in a written notice to each of the Secured Parties in accordance with the provisions thereof, and (ii) in the case of notice to any Secured Party, by delivery of such notice to such Secured Party at its address specified in the Securities Purchase Agreement or at such other address as shall be designated by such Secured Party in a written notice to the Grantor and each other Secured Party in accordance with the provisions thereof.

24. Separate, Continuing Security Interests; Assignments under Transaction Documents. This Agreement shall create a separate, continuing security interest in the Collateral in favor of each Secured Party and shall (a) remain in full force and effect until Satisfaction in Full of the Secured Obligations, (b) be binding upon the Grantor, and its permitted successors and permitted assigns, and (c) inure to the benefit of, and be enforceable by, the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Secured Party may, in accordance with the provisions of the Transaction Documents, assign or otherwise transfer all or any portion of its rights and obligations under the Transaction Documents to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party herein or otherwise. Upon Satisfaction in Full of the Secured Obligations, the Security Interests granted hereby shall terminate and all rights to the Collateral shall revert to the Grantor or any other Person entitled thereto. At such time, each Secured Party will authorize the filing of appropriate termination statements to terminate such Security Interests. No transfer or renewal, extension, assignment, or termination of this Agreement or any other Transaction Document, or any other instrument or document executed and delivered by the Grantor to any Secured Party nor any additional loans made by any Secured Party to the Grantor, nor the taking of further security, nor the retaking or re-delivery of the Collateral to the Grantor, or any of them, by any Secured Party, nor any other act of the Secured Parties, or any of them, shall release the Grantor from any obligation, except a release or discharge executed in writing by all Secured Parties. No Secured Party shall by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder, unless such waiver is in writing and signed by such Secured Party and then only to the extent therein set forth. A waiver by any Secured Party of any right or remedy on any occasion shall not be construed as a bar to the exercise of any such right or remedy which such Secured Party would otherwise have had on any other occasion.

25. Governing Law; Jurisdiction; Service of Process; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper; provided, however, any suit seeking enforcement against any Collateral or other property may be brought, at any Secured Party's option, in the courts of any jurisdiction where such Secured Party elects to bring such action or where such Collateral or other property may be found. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

26. Miscellaneous.

(a) This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Security Document *mutatis mutandis*.

(b) Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

(c) Headings used in this Agreement are for convenience only and shall not be used in connection with the interpretation of any provision hereof.

(d) The pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

(e) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. For clarification purposes, the Recitals are part of this Agreement.

(f) Unless the context of this Agreement or any other Transaction Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Transaction Document refer to this Agreement or such other Transaction Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Transaction Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Transaction Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). **“Satisfaction in Full of the Secured Obligations”** shall mean the indefeasible payment in full in cash and discharge, or other satisfaction in accordance with the terms of the Transaction Documents and discharge, of all Secured Obligations in full. Any reference herein to any Person shall be construed to include such Person’s permitted successors and permitted assigns. Any requirement of a writing contained herein or in any other Transaction Document shall be satisfied by the transmission of a Record and any Record so transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.



(g) All dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars (“**U.S. Dollars**”), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in The Wall Street Journal on the relevant date of calculation.

*[Signature pages follow]*

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Agreement by and through their duly authorized officers, as of the day and year first above written.

**GRANTOR:**

**DVINEWAVE INC.**, a Delaware corporation

By:

\_\_\_\_\_  
Michael Leabman, President

SECURITY AGREEMENT

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**SECURED PARTIES:**

[ \_\_\_\_\_ ]

By:

Name: \_\_\_\_\_

Title:

SECURITY AGREEMENT

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**SCHEDULE 1**

COMMERCIAL TORT CLAIMS

None.

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**SCHEDULE 2**

REAL PROPERTY

Owned Real Property

None

Leased Real Property

Grantor anticipates that in the coming months it will begin to lease the following property:

303 Ray Street  
Pleasanton, CA 93308

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**SCHEDULE 3**

LIST OF UNIFORM COMMERCIAL CODE FILING JURISDICTIONS

Delaware Secretary of State

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## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this “**Agreement**”) is made effective as of October 1, 2013 (“**Effective Date**”), by and between DvineWave Inc., a Delaware corporation (“**Company**”), and Stephen R. Rizzzone (“**Executive**”).

The parties agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.

“**Board**” — means the board of directors of Company.

“**Cause**” — means the occurrence of any of the following events during Executive’s employment under this Agreement: (a) Executive’s conviction of a felony involving fraud, misappropriation, embezzlement or dishonesty in conjunction with Executive’s duties to Company; or (b) Executive’s repeated and willful failure to perform Executive’s job duties as defined by the Board or material breach of this Agreement or the PIIA, provided, in each case, that the Board notifies the Executive of the acts deemed to constitute such repeated and willful failure or material breach in writing and Executive fails to cure such failure or breach within sixty (60) days after written notice is given.

“**Continuation Period**” — means a period of time commencing upon the consummation of a Liquidation Event and terminating upon the later to occur of (a) the first anniversary of the Liquidation Event and (b) the fourth anniversary of the Effective Date.

“**Disability**” — means if (a) the Executive is unable to perform the essential duties of the Executive’s employment due to physical or emotional incapacity or illness, where such inability is reasonably expected to be of long-continued and indefinite duration (i.e., for at least three (3) months); or (b) the Executive is entitled to (i) disability retirement benefits under the federal Social Security Act or (ii) recover benefits under any long-term disability plan or policy maintained by Company or the Executive.

“**Equity Percentage**” – means six percent (6%) of Company’s fully-diluted capitalization, assuming the exercise or conversion of all exercisable or convertible securities and including any shares reserved under any equity incentive plan or similar arrangement.

“**Good Reason**” — means the occurrence of any of the following events during Executive’s employment under this Agreement: (a) any material reduction in Base Salary or target Performance Bonus(es); (b) any reduction in Executive’s duties (including title, responsibilities and/or authorities), provided, that that the Board may elect to separate the Chairman and Chief Executive Officer roles if they deem such separation is in the best interests of the stockholders without such separation constituting Good Reason; (c) requiring Executive to report to anyone other than the Board or employees of Company or any subsidiary of Company that reported to Executive to report directly to the Board; (d) any requirement that the Executive relocate without appropriate relocation compensation and consideration, including not requiring Executive to maintain two households, consideration of family circumstances, and providing a relocation package consistent with Company’s industry, the Executive’s position and taking into consideration Executive’s specific housing situation.

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“**IPO**” – means (a) a firm commitment underwritten public offering of Company’s Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, immediately following which Company’s Common Stock is listed on a national securities exchange, or (b) another equity financing transaction by Company immediately following which Company’s Common Stock is either (i) listed on a national securities exchange, or (ii) otherwise publicly traded and listed, with material public float and trading volume, as determined in good faith by the Board.

“**Liquidation Event**” – means a merger, acquisition, consolidation or other transaction (other than an Equity Financing) following which the holders of Company’s outstanding voting securities prior to such transaction hold less than 50% of the outstanding voting securities of the acquiring or surviving corporation, or a sale, license or transfer of all or substantially all of Company’s assets.

“**PIIA**” – means Company’s standard form of Proprietary Information and Inventions Agreement attached hereto as Exhibit B.

“**Section 409A**” – means Section 409A of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder.

2. Employment. Company hereby employs Executive, and Executive hereby accepts such employment, upon the terms and conditions set forth herein.

3. Duties.

3.1 Position. Executive is employed as Company’s President, Chief Executive Officer and Chairman, and shall have the duties and responsibilities as are normally related to such position, as well as such additional duties and responsibilities as may be reasonably assigned by Company’s Board of Directors (the “**Board**”) from time to time. Executive shall perform faithfully and diligently all such duties and responsibilities. Executive shall report to the Board. Executive will be entitled to serve as member of the Board for so long as Executive continues to serve as Company’s President, Chief Executive Officer, but shall resign from the Board and from his role as Chairman of the Board immediately after any termination of his employment hereunder. As an officer and member of the Board, Executive shall enter in the form of Indemnification Agreement attached as Exhibit A (the “**Indemnification Agreement**”). In addition, for so long as Executive serves as a member of the Board and for a customary period thereafter, Company shall maintain director’s and officer’s insurance in such amount as reasonably agreed by the Board.

3.2 Best Efforts/Full-time. Executive shall expend Executive’s best efforts on behalf of Company, and will abide by all policies and decisions made by Company, as well as all applicable federal, state and local laws, regulations or ordinances. Executive shall act in the best interest of Company at all times. Executive shall devote Executive’s full business time and efforts to the performance of Executive’s assigned duties for Company, unless otherwise approved in advance by the Board; provided, however, that the Executive shall be permitted to serve as a member of the board of directors or managers of up to two corporations, limited liability companies or other entities other than Company, or to participate in other advisory or charitable activities, provided further that such activities do not conflict with Company’s core business and such service does not materially interfere with Executive’s duties at Company.



4. At-Will Employment. Executive's employment with Company is at-will and not for any specified period and may be terminated at any time with or without cause or advance notice by either Executive or Company, subject to the conditions set forth in Section 7 below. No representative of Company, other than the Board, has the authority to alter the at-will employment relationship. Nothing in this Agreement is intended to or should be construed to contradict, modify or alter this at-will relationship.

5. Compensation.

5.1 Base Salary. As compensation for Executive's performance of Executive's duties hereunder, Company shall pay to Executive an initial base salary of \$150,000.00 per year prior to the consummation of the IPO and \$300,000.00 per year beginning immediately following the consummation the IPO (the "**Base Salary**"). Subject to Company's capital needs and compliance with Section 409A and applicable minimum wage requirements, the Executive may elect to defer the payment of some or all of the Base Salary earned prior to the IPO until the consummation of the IPO (but no later than then one year after deferral). The Base Salary shall be payable in accordance with the normal payroll practices of Company, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions. In the event Executive's employment under this Agreement is terminated by either party, for any reason, Executive shall earn the Base Salary prorated to the date of termination. The Base Salary shall be subject to periodic review and increase in the discretion of the Board. This position is an exempt position, which means Executive is paid for the job and not by the hour. Accordingly, Executive shall not receive overtime pay if Executive works more than 8 hours in a workday or 40 hours in a workweek.

5.2 Performance Bonuses. Executive shall be eligible to receive up to five (5) performance bonuses (the "**Performance Bonuses**" and each, a "**Performance Bonus**") per year in the amount of \$30,000.00 each, up to \$150,000.00 in the aggregate, four (4) of which Performance Bonuses shall be payable with respect to the completion of each fiscal quarter and one (1) of which shall be payable with respect to the completion of the fiscal year. Each Performance Bonus shall be payable in accordance with the normal payroll practices of Company on the first payroll date following the completion of each fiscal quarter, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions. The criteria for the payment of the Performance Bonuses shall be based upon the achievement of objectives (the "**Objectives**") as mutually agreed between the Executive and the Board prior to the beginning of each fiscal year or as otherwise agreed in writing thereafter. In the event Executive's employment by Company terminates for any reason prior to the completion of a fiscal quarter, the Performance Bonus for such fiscal quarter shall be pro-rated based upon the number of days of such fiscal quarter serve and the achievement or partial achievement of any Objectives during such fiscal quarter. No Performance Bonuses shall be earned or payable with respect to the period of Executive's employment prior to the consummation of the IPO.

5.3 Equity Grants. Executive shall be granted an incentive stock option pursuant to Company's equity incentive plan (the "**Plan**") of 1,100,000 shares (the "**Option**") representing the Equity Percentage as of the grant date together with an estimate of the dilutive effect of the IPO. The Option shall be issued as soon as reasonably practicable following the Effective Date and shall be subject to vesting with 1/48th of the shares subject to the Option vesting upon the completion of each month of continuous service by Executive as an employee, director or consultant of Company and acceleration of vesting as set forth in Section 8 below. If, following the consummation of the IPO, the Option represents more than the Equity Percentage, then, at Company's election, Company may cancel up to the number of shares subject to the Option, without additional consideration to Executive, such that the Option shall represent the Equity Percentage following the consummation of the IPO. If and to the extent the Option shall represent less than the Equity Percentage following the consummation of the IPO, Company shall grant Executive an additional option to purchase the number of shares of Common Stock of Company constituting, together with the Option, the Equity Percentage immediately following the consummation of the IPO (the "**Second Option**"). The Second Option shall vest, subject to Executive's continued employment, over the same vesting schedule as the Option with appropriate adjustment such that one hundred percent (100%) of the shares subject to the Option and the Second Option shall be fully vested and exercisable on the four-year anniversary of the Effective Date, unless earlier terminated or accelerated as provided herein. The Option and the Second Option shall each be subject to the terms and conditions of the Plan and form of agreement thereunder and shall have an exercise price per share equal to the fair market value of Company's Common Stock as determined by the Board in good faith on the date of grant.

6. Benefits. Executive shall be eligible for all customary and usual fringe benefits generally available to senior executives of Company, including group health insurance coverage, subject to the terms and conditions of Company's benefit plan documents.

7. Business Expenses. Executive will be reimbursed for all reasonable, out-of-pocket business expenses incurred in the performance of Executive's duties on behalf of Company ("**Business Expenses**"). To obtain reimbursement, expenses must be submitted promptly with appropriate supporting documentation in accordance with Company's policies.

## 8. Termination of Employment.

8.1 By Death or Disability. Executive's employment will terminate automatically on the death of Executive or upon Executive's Disability. In such event, Company will pay to Executive's beneficiaries or estate, as appropriate, in a lump sum less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions, within thirty (30) days of Executive's death, an amount equal to the sum of (a) one year of additional Base Salary at the rate in effect of such termination date, (b) five (5) Performance Bonuses, with each such Performance Bonus equal to the average of the Performance Bonuses paid with respect to the two (2) fiscal quarters or the fiscal quarter and fiscal year end, as applicable, immediately preceding Executive's death or Disability (such amount in this Section 8.2(b) together with that in Section 8.2(a) being referred to in this Agreement as the "**Severance Amount**"), and (c) any Base Salary as shall have accrued but remain unpaid and any un-reimbursed Business Expenses as of the date of Executive's death or Disability. In addition, on the death of Executive or upon Executive's Disability, twenty-five percent (25%) of the shares subject to the Option and the Second Option shall immediately vest and become exercisable, Executive shall have a period of one year post-termination in which to exercise the Option and the Second Option, and if a Liquidation Event shall occur following the death of Executive or upon Executive's Disability and prior to the termination of the Option and the Second Option, one hundred percent (100%) of the shares subject to the Option and the Second Option shall immediately vest and become exercisable effective immediately prior to the consummation of the Liquidation Event. For purposes of this Agreement, in the event of a dispute, the determination of a Disability shall be made reasonably by the Board of Directors acting in good faith and shall be supported by advice of an independent physician competent in the area to which such Disability relates. Executive must submit to a reasonable number of examinations by the physician making the determination of disability, and the Executive hereby authorizes the disclosure and release to the Company of such determination and all supporting medical records. If Executive is not legally competent, Executive's legal guardian or duly authorized attorney-in-fact will act in Executive's stead, for the purposes of submitting Executive to the examinations, and providing the authorization of disclosure as required under this Section 8.2.

8.2 By Company for Cause. Executive's employment with the Company may be terminated at the option of and by written notice from the Company for Cause (which notice shall specify the applicable Cause, in reasonable detail). Upon any such termination, all rights, obligations and duties of the parties hereunder shall immediately cease (including, but not limited to, the payment by the Company of any Performance Bonuses or severance payments as set forth in this Section 8), except for the Executive's obligations under Section 10 and Company's obligation; provided, that Company shall pay any accrued but unpaid Base Salary and reimburse any Business Expenses as provided in Section 7.

8.3 By Company without Cause or by Employee for Good Reason. Company may terminate Executive "at will" and without Cause at any time, and Executive may terminate Executive's employment for Good Reason. In the event Company terminates Executive's employment without Cause or Executive terminates Executive's employment with Good Reason during Executive's employment hereunder, all of the following will apply: (a) immediately upon termination, Company will pay to Executive the Severance Amount; (b) twenty-five percent (25%) of the shares subject to the Option and the Second Option shall immediately vest and become exercisable, (c) Executive shall have a period of one year following termination in which to exercise the Option and the Second Option, and (d) if a Liquidation Event shall occur following Company's termination of Executive's employment without Cause and prior to the termination of the Option and the Second Option, one hundred percent (100%) of the shares subject to the Option and the Second Option shall immediately vest and become exercisable.

8.4 By Executive without Good Reason. Executive may terminate Executive's Employment at will (without Good Reason) upon written notice to Company. Executive shall be entitled to all Base Salary at the rate then in effect up to and through the effective date of termination, as well as any unreimbursed Business Expenses.

8.5 Continuation of Benefits. Following the coverage termination date under Company's group medical, life and long-term disability insurance plans, Executive, his spouse and his dependents shall be entitled to continuation of coverage pursuant to any statutory rights Executive may then have for such continuation coverage (whether under part VI of Subtitle B of Title I of the Executive Retirement Income Security Act of 1974, as amended, or Section 4980B of the Internal Revenue Code of 1986, as amended (together, "**COBRA**"), or otherwise). Such continuation coverage shall be provided in accordance with applicable law and the terms of the any Company benefit plans as they may be amended from time to time and shall be afforded no longer than the period provided by law and only to the extent that Executive complies with all conditions of such continuation coverage on a timely basis. In the event of termination by Company without Cause, by Executive with Good Reason or upon Executive's death or Disability, the Company will continue to provide coverage or reimburse Executive for the costs of COBRA for a period of one (1) year.

8.6 Application of Section 409A.

(a) Notwithstanding anything set forth in this Agreement to the contrary, any payments and benefits provided pursuant to this Agreement which constitute "deferred compensation" within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect ("Section 409A") shall not commence until Executive has incurred a "separation from service" (as such term is defined in the Treasury Regulation Section 1.409A-1(h) ("Separation From Service"), unless Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A.

(b) It is intended that each installment of the severance benefits payments provided for in this Agreement is a separate "payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For the avoidance of doubt, it is intended that payments of the Severance Benefits set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if the Company (or, if applicable, the successor entity thereto) determines that the severance benefits constitute "deferred compensation" under Section 409A and Executive is, on the termination of Executive's service, a "specified employee" of Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely, to the extent necessary to avoid the incurrance of the adverse personal tax consequences under Section 409A, the timing of the severance benefit payments shall be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive's Separation From Service or (ii) the date of Executive's death (such applicable date, the "Specified Employee Initial Payment Date"), Company (or the successor entity thereto, as applicable) shall (A) pay Executive a lump sum amount equal to the sum of the severance benefit payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the severance benefits had not been so delayed pursuant to this section and (B) commence paying the balance of the severance benefits in accordance with the applicable payment schedules set forth in this Agreement.

(c) Except to the minimum extent that payments must be delayed because Executive is a “specified employee” (as described above) or until the effectiveness of the Release, all amounts will be paid as soon as practicable in accordance with the Company’s normal payroll practices.

9. Liquidation Event. Upon the occurrence of a Liquidation Event, in addition to any other benefits or acceleration of vesting as set forth herein, Executive’s employment as a full-time employee of Company shall terminate, and Executive and Company shall enter into a consulting agreement on terms to be mutually agreed (the “**Consulting Agreement**”), which Consulting Agreement shall, in any event, provide for Executive to provide consulting services to Company in an amount mutually agreed with the acquiring entity in exchange for (a) Base Salary for the duration of the Consulting Period at the rate in effect of as of the date such election is made by the Executive, (b) the full amount of the Performance Bonuses (five Performance Bonuses per year), (c) such other benefits and expense reimbursements as would otherwise be provided to Executive pursuant to Sections 6 and 7 hereof in the event Executive remained employed hereunder, (d) the continued monthly vesting of the Option and the Second Option, as applicable, during the duration of the Continuation Period, subject to Executive’s continuous service to Company pursuant to the Consulting Agreement during each such month of the Continuation Period. Prior to the expiration of the Continuation Period, the Consulting Agreement may only be terminated by Executive (but not by Company). The Continuation Period shall be for a minimum of 24 months or until all of the unvested options have vested, whichever is greater. For the avoidance of doubt, in the event Executive enters into a consulting agreement to provide consulting services to Company during the Continuation Period such termination of Executive’s employment as a full-time employee of Company shall not constitute a termination of Executive without Cause or resignation by Executive with or without Good Reason.

10. No Conflict of Interest. During the term of Executive’s employment with Company, Executive must not engage in any work, paid or unpaid, that creates a conflict of interest with Company. Such work shall include, but is not limited to, directly or indirectly competing with Company in any way, or acting as an officer, director, Executive, consultant, stockholder, volunteer, lender, or agent of any business enterprise of the same nature as, or which is in direct competition with, the business in which Company is now engaged or in which Company becomes engaged during the term of Executive’s employment with Company, as may be determined by the Board in its sole discretion. If the Board believes such a conflict exists during the term of this Agreement, the Board may ask Executive to choose to discontinue the other work or resign employment with Company. Executive hereby represents and warrants that acceptance of employment with Company and execution and performance of this Agreement by Executive does not conflict with or violate any provision of or constitute a default under any agreement, judgment, award or decree to which Executive is a party or by which Executive is bound, including, but not limited to, any implied or express agreement with any of Executive’s prior employers.

11. Proprietary Information and Inventions Assignment Agreement. Executive agrees to read, sign and abide by PIIA, which is incorporated herein by reference.

## 12. Parachute Payments.

12.1 If any payment or benefit Executive would receive from the Company pursuant to this Agreement or otherwise (“**Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then such Payment will be equal to the Reduced Amount. The “**Reduced Amount**” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount ((x) or (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive’s receipt of the greatest economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a Reduced Amount will give rise to the greater after tax benefit, the reduction in the Payments shall occur in the following order: (a) reduction of cash payments; (b) cancellation of accelerated vesting of equity awards other than stock options; (c) cancellation of accelerated vesting of stock options; and (d) reduction of other benefits paid to Executive. Within any such category of payments and benefits (that is, (a), (b), (c) or (d)), a reduction shall occur first with respect to amounts that are not “deferred compensation” within the meaning of Section 409A of the Code and then with respect to amounts that are. In the event that acceleration of compensation from Executive’s equity awards is to be reduced, such acceleration of vesting shall be canceled, subject to the immediately preceding sentence, in the reverse order of the date of grant.

12.2 The independent registered public accounting firm engaged by Company for general audit purposes as of the day prior to the effective date of the event described in Section 280G(b)(2)(A)(i) of the Code shall perform the foregoing calculations. If the independent registered public accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting such event, Company shall appoint a nationally recognized independent registered public accounting firm to make the determinations required hereunder. Company shall bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder. The independent registered public accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to Company and Executive within thirty (30) calendar days after the date on which Executive’s right to a Payment is triggered (if requested at that time by Company or Executive) or such other time as reasonably requested by Company or Executive. Any good faith determinations of the independent registered public accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

12.3 Notwithstanding the above, prior to any reduction in payments and benefits under this Section 6, at Executive’s request the Company agrees, if permissible under Section 280G of the Code and applicable law (and subject to any applicable requirements including any requirements that may be applicable to Executive), to solicit a vote of all eligible shareholders of the Company for approval of such amounts such that the compensation will not be subject to the Excise Tax as provided in Q&As 6 and 7 of Section 1.280G-1 of the Treasury Regulations or any superseding provision of such regulations. The Company agrees to take all reasonable steps, in good faith, to solicit such vote if so request.

13. General Provisions.

13.1 Successors and Assigns. The rights and obligations of Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Company. Executive shall not be entitled to assign any of Executive's rights or obligations under this Agreement.

13.2 Waiver. Either party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Agreement.

13.3 Attorneys' Fees. Each side will bear its own attorneys' fees in any dispute unless a statutory section at issue, if any, authorizes the award of attorneys' fees to the prevailing party.

13.4 Severability. In the event any provision of this Agreement is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

13.5 Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Executive and Company and has participated in the negotiation of its terms. Furthermore, Company acknowledges that Company has had an opportunity to review and revise the Agreement and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

13.6 Governing Law; Venue and Jurisdiction. This Agreement shall be governed by and construed under California law, without regard to conflict of laws principles. Any dispute between the parties arising from this Agreement, including any disputes concerning the negotiation, interpretation, validity, performance, breach or enforcement of this Agreement and the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Orange County, California before one arbitrator, who shall be a retired judge of the Los Angeles Superior Court or Orange County Superior Court or a retired justice of the California Court of Appeal for the Second Appellate District. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the arbitration award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any party who is deemed the prevailing party by the arbitrator shall be entitled to his or its reasonable attorneys' fees and costs. The Company shall bear the costs of the arbitrator, forum and filing fees in connection with any such arbitration.

13.7 Survival. Sections 8, 9, 10, 11, 12 and 13 of this Agreement shall survive any termination of Executive's employment by Company.

13.8 Confidentiality of Terms. Executive agrees to follow Company's strict policy that Executives must not disclose, either directly or indirectly, any information, including any of the terms of this Agreement, regarding salary, bonuses, or stock purchase or option allocations to any person, including other Executives of Company; provided, that Executive may discuss such terms with members of his immediate family and any legal, tax or accounting specialists who provide Executive with individual legal, tax or accounting advice provided, further, that such family members or specialists are bound by similar obligations of confidentiality.

13.9 Notice. Any notices hereunder will be given to the appropriate party at the address, fax number or email address set forth on the signature page hereto, or at such other address as the party will specify in writing. Notice will be deemed given: upon delivery, if sent by email or personal delivery; if sent by fax, upon confirmation of receipt; or if sent by certified mail, postage prepaid, 3 days after the date of mailing.

14. Entire Agreement; Amendments. This Agreement, including the Indemnification Agreement, the PIIA and the Plan and related stock option documents constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This Agreement may be amended or modified only with a signed writing by Company and Executive. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

*[Signature Page Follows]*



THE PARTIES TO THIS AGREEMENT HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN. THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.

**EXECUTIVE:**

/s/ Stephen R. Rizzone  
\_\_\_\_\_  
Stephen R. Rizzone

Address:

1301 Dolphin Terrace  
Corona del Mar, CA 92625

**COMPANY:**

DVINEWAVE INC.

By: /s/ Michael Leabman  
\_\_\_\_\_

Name: Michael Leabman  
\_\_\_\_\_

Title: Chief Technology Officer  
\_\_\_\_\_

Address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

## EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this “**Agreement**”) is made effective as of October 1, 2013 (“**Effective Date**”), by and between DvineWave Inc., a Delaware corporation (“**Company**”), and Michael Leabman (“**Executive**”).

The parties agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.

“**Board**” — means the board of directors of Company.

“**Cause**” — means the occurrence of any of the following events during Executive’s employment under this Agreement: (a) Executive’s conviction of a felony involving fraud, misappropriation, embezzlement or dishonesty in conjunction with Executive’s duties to Company; or (b) Executive’s repeated and willful failure to perform Executive’s job duties as defined by the Board or material breach of this Agreement or the PIIA, provided, in each case, that the Board notifies the Executive of the acts deemed to constitute such repeated and willful failure or material breach in writing and Executive fails to cure such failure or breach within sixty (60) days after written notice is given.

“**Disability**” — means if (a) the Executive is unable to perform the essential duties of the Executive’s employment due to physical or emotional incapacity or illness, where such inability is reasonably expected to be of long-continued and indefinite duration (i.e., for at least three (3) months); or (b) the Executive is entitled to (i) disability retirement benefits under the federal Social Security Act or (ii) recover benefits under any long-term disability plan or policy maintained by Company or the Executive.

“**Equity Percentage**” – means three percent (3%) of Company’s fully-diluted capitalization, assuming the exercise or conversion of all exercisable or convertible securities and including any shares reserved under any equity incentive plan or similar arrangement.

“**Good Reason**” — means the occurrence of any of the following events during Executive’s employment under this Agreement: (a) any material reduction in Base Salary or target Performance Bonus(es); (b) any reduction in Executive’s duties (including title, responsibilities and/or authorities); (c) requiring Executive to report to anyone other than the Chief Executive Officer of Company; (d) any requirement that the Executive relocate without appropriate relocation compensation and consideration, including not requiring Executive to maintain two households, consideration of family circumstances, and providing a relocation package consistent with Company’s industry, the Executive’s position and taking into consideration Executive’s specific housing situation.

“**IPO**” – means (a) a firm commitment underwritten public offering of Company’s Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, immediately following which Company’s Common Stock is listed on a national securities exchange, or (b) another equity financing transaction by Company immediately following which Company’s Common Stock is either (i) listed on a national securities exchange, or (ii) otherwise publicly traded and listed, with material public float and trading volume, as determined in good faith by the Board.

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“**PIIA**” – means Company’s standard form of Proprietary Information and Inventions Agreement attached hereto as Exhibit B.

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2. Employment. Company hereby employs Executive, and Executive hereby accepts such employment, upon the terms and conditions set forth herein.

3. Duties.

3.1 Position. Executive is employed as Company’s Chief Technology Officer, and shall have the duties and responsibilities as are normally related to such position, as well as such additional duties and responsibilities as may be reasonably assigned by Company’s Chief Executive Officer (the “**CEO**”) or the Board from time to time. Executive shall perform faithfully and diligently all such duties and responsibilities and shall report to the CEO. Executive will be entitled to serve as member of the Board at the pleasure of the other members of the Board and the stockholders of Company and hereby agrees to resign if so requested by a majority of the other members of the Board or the stockholders of Company. As an officer and member of the Board, Executive shall enter in the form of Indemnification Agreement attached as Exhibit A (the “**Indemnification Agreement**”). In addition, for so long as Executive serves as a member of the Board and for a customary period thereafter, Company shall maintain director’s and officer’s insurance in such amount as reasonably agreed by the Board.

3.2 Best Efforts/Full-time. Executive shall expend Executive’s best efforts on behalf of Company, and will abide by all policies and decisions made by Company, as well as all applicable federal, state and local laws, regulations or ordinances. Executive shall act in the best interest of Company at all times. Executive shall devote Executive’s full business time and efforts to the performance of Executive’s assigned duties for Company, unless otherwise approved in advance by the Board; provided, however, that the Executive shall be permitted to serve as a member of the board of directors or managers of up to two corporations, limited liability companies or other entities other than Company, or to participate in other advisory or charitable activities, provided further that such activities do not conflict with Company’s core business and such service does not materially interfere with Executive’s duties at Company.

4. At-Will Employment. Executive's employment with Company is at-will and not for any specified period and may be terminated at any time with or without cause or advance notice by either Executive or Company, subject to the conditions set forth in Section 7 below. No representative of Company, other than the Board, has the authority to alter the at-will employment relationship. Nothing in this Agreement is intended to or should be construed to contradict, modify or alter this at-will relationship.

5. Compensation.

5.1 Base Salary. As compensation for Executive's performance of Executive's duties hereunder, Company shall pay to Executive an initial base salary of \$250,000.00 per year (the "**Base Salary**"). The Base Salary shall be payable in accordance with the normal payroll practices of Company, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions. In the event Executive's employment under this Agreement is terminated by either party, for any reason, Executive shall earn the Base Salary prorated to the date of termination. The Base Salary shall be subject to periodic review and increase in the discretion of the Board. This position is an exempt position, which means Executive is paid for the job and not by the hour. Accordingly, Executive shall not receive overtime pay if Executive works more than 8 hours in a workday or 40 hours in a workweek.

5.2 Performance Bonuses. Executive shall be eligible to receive performance bonuses (the "**Performance Bonuses**" and each, a "**Performance Bonus**") in an amount equal to up to twenty percent (20%) of the Base Salary in the aggregate per annum. The criteria for the payment of the Performance Bonuses shall be based upon the achievement of certain objectives with respect to Executive's performance and the performance of Company (the "**Objectives**") as determined by the CEO and the Board. Each Performance Bonus shall be payable in accordance with the normal payroll practices of Company on the first payroll date following the completion of the fiscal quarter in which such Objective was achieved, less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions. In the event Executive's employment by Company terminates for any reason prior to the completion of a fiscal quarter, the Performance Bonus for such fiscal quarter shall be pro-rated based upon the number of days of such fiscal quarter serve and the achievement or partial achievement of any Objectives during such fiscal quarter. No Performance Bonuses shall be earned or payable with respect to the period of Executive's employment prior to the consummation of the IPO.

5.3 Equity Grants. Executive shall be granted an incentive stock option pursuant to Company's equity incentive plan (the "**Plan**") of 230,000 shares (the "**Option**") representing, together with any other shares or options to acquire shares of the Company's Common Stock owned by Executive ("**Other Equity Interests**"), the Equity Percentage as of the grant date together with an estimate of the dilutive effect of the IPO. The Option shall be issued as soon as reasonably practicable following the Effective Date and shall be subject to vesting with 1/48<sup>th</sup> of the shares subject to the Option vesting upon the completion of each month of continuous service by Executive as an employee, director or consultant of Company and acceleration of vesting as set forth in Sections 8 and 9 below. If, following the consummation of the IPO, the Option, together with any Other Equity Interests, represents more than the Equity Percentage, then, at Company's election, Company may cancel up to the number of shares subject to the Option, without additional consideration to Executive, such that the Option, together with any Other Equity Interests, shall represent the Equity Percentage following the consummation of the IPO. If and to the extent the Option, together with any Other Equity Interests, shall represent less than the Equity Percentage following the consummation of the IPO, Company shall grant Executive an additional option to purchase the number of shares of Common Stock of Company constituting, together with the Option and any Other Equity Interests, the Equity Percentage immediately following the consummation of the IPO (the "**Second Option**"). The Second Option shall vest, subject to Executive's continued employment, over the same vesting schedule as the Option with appropriate adjustment such that one hundred percent (100%) of the shares subject to the Option and the Second Option shall be fully vested and exercisable on the four-year anniversary of the Effective Date, unless earlier terminated or accelerated as provided herein. The Option and the Second Option shall each be subject to the terms and conditions of the Plan and form of agreement thereunder and shall have an exercise price per share equal to the fair market value of Company's Common Stock as determined by the Board in good faith on the date of grant.

6. Benefits. Executive shall be eligible for all customary and usual fringe benefits generally available to senior executives of Company, including group health insurance coverage, subject to the terms and conditions of Company's benefit plan documents.

7. Business Expenses. Executive will be reimbursed for all reasonable, out-of-pocket business expenses incurred in the performance of Executive's duties on behalf of Company ("**Business Expenses**"). To obtain reimbursement, expenses must be submitted promptly with appropriate supporting documentation in accordance with Company's policies.

#### 8. Termination of Employment.

8.1 By Death or Disability. Executive's employment will terminate automatically on the death of Executive or upon Executive's Disability. In such event, Company will pay to Executive's beneficiaries or estate, as appropriate, in a lump sum less required deductions for state and federal withholding tax, social security and all other employment taxes and payroll deductions, within thirty (30) days of Executive's death, an amount equal to the sum of (a) one year of additional Base Salary at the rate in effect of such termination date, (b) a Performance Bonus in an amount equal to the sum of the Performance Bonuses actually paid by Company to Executive in the calendar year immediately preceding Executive's death or Disability (such amount in this Section 8.2(b) together with that in Section 8.2(a) being referred to in this Agreement as the "**Severance Amount**"), and (c) any Base Salary as shall have accrued but remain unpaid and any un-reimbursed Business Expenses as of the date of Executive's death or Disability. In addition, on the death of Executive or upon Executive's Disability, twenty-five percent (25%) of the shares subject to the Option shall immediately vest and become exercisable, Executive shall have a period of one year post-termination in which to exercise the Option, and if a Liquidation Event shall occur following the death of Executive or upon Executive's Disability and prior to the termination of the Option, one hundred percent (100%) of the shares subject to the Option shall immediately vest and become exercisable effective immediately prior to the consummation of the Liquidation Event. For purposes of this Agreement, in the event of a dispute, the determination of a Disability shall be made reasonably by the Board of Directors acting in good faith and shall be supported by advice of an independent physician competent in the area to which such Disability relates. Executive must submit to a reasonable number of examinations by the physician making the determination of disability, and the Executive hereby authorizes the disclosure and release to the Company of such determination and all supporting medical records. If Executive is not legally competent, Executive's legal guardian or duly authorized attorney-in-fact will act in Executive's stead, for the purposes of submitting Executive to the examinations, and providing the authorization of disclosure as required under this Section 8.1.

8.2 By Company for Cause. Executive's employment with the Company may be terminated at the option of and by written notice from the Company for Cause (which notice shall specify the applicable Cause, in reasonable detail). Upon any such termination, all rights, obligations and duties of the parties hereunder shall immediately cease (including, but not limited to, the payment by the Company of any Performance Bonuses or severance payments as set forth in this Section 8), except for the Executive's obligations under Section 10 and Company's obligation; provided, that Company shall pay any accrued but unpaid Base Salary and reimburse any Business Expenses as provided in Section 7.

8.3 By Company without Cause or by Employee for Good Reason. Company may terminate Executive "at will" and without Cause at any time, and Executive may terminate Executive's employment for any reason, including Good Reason. In the event Company terminates Executive's employment without Cause or Executive terminates Executive's employment with Good Reason during Executive's employment hereunder, all of the following will apply: (a) immediately upon termination, Company will pay to Executive the Severance Amount; (b) twenty-five percent (25%) of the shares subject to the Option shall immediately vest and become exercisable, (c) Executive shall have a period of one year following termination in which to exercise the Option, and (d) if a Liquidation Event shall occur following Company's termination of Executive's employment without Cause and prior to the termination of the Option, one hundred percent (100%) of the shares subject to the Option shall immediately vest and become exercisable.

8.4 By Executive without Good Reason. Executive may terminate Executive's Employment at will (without Good Reason) upon written notice to Company. Executive shall be entitled to all Base Salary at the rate then in effect up to and through the effective date of termination, as well as any unreimbursed Business Expenses.

8.5 Continuation of Benefits. Following the coverage termination date under Company's group medical, life and long-term disability insurance plans, Executive, his spouse and his dependents shall be entitled to continuation of coverage pursuant to any statutory rights Executive may then have for such continuation coverage (whether under part VI of Subtitle B of Title I of the Executive Retirement Income Security Act of 1974, as amended, or Section 4980B of the Internal Revenue Code of 1986, as amended (together, "**COBRA**"), or otherwise). Such continuation coverage shall be provided in accordance with applicable law and the terms of the any Company benefit plans as they may be amended from time to time and shall be afforded no longer than the period provided by law and only to the extent that Executive complies with all conditions of such continuation coverage on a timely basis. In the event of termination by Company without Cause, by Executive with Good Reason or upon Executive's death or Disability, the Company will continue to provide coverage or reimburse Executive for the costs of COBRA for a period of one (1) year.

## 8.6 Application of Section 409A.

(a) Notwithstanding anything set forth in this Agreement to the contrary, any payments and benefits provided pursuant to this Agreement which constitute “deferred compensation” within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (“**Section 409A**”) shall not commence until Executive has incurred a “separation from service” (as such term is defined in the Treasury Regulation Section 1.409A-1(h) (“**Separation From Service**”), unless Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A.

(b) It is intended that each installment of the severance benefits payments provided for in this Agreement is a separate “payment” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For the avoidance of doubt, it is intended that payments of the Severance Benefits set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if the Company (or, if applicable, the successor entity thereto) determines that the severance benefits constitute “deferred compensation” under Section 409A and Executive is, on the termination of Executive’s service, a “specified employee” of Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely, to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the severance benefit payments shall be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive’s Separation From Service or (ii) the date of Executive’s death (such applicable date, the “**Specified Employee Initial Payment Date**”), Company (or the successor entity thereto, as applicable) shall (A) pay Executive a lump sum amount equal to the sum of the severance benefit payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the severance benefits had not been so delayed pursuant to this section and (B) commence paying the balance of the severance benefits in accordance with the applicable payment schedules set forth in this Agreement.

(c) Except to the minimum extent that payments must be delayed because Executive is a “specified employee” (as described above) or until the effectiveness of the Release, all amounts will be paid as soon as practicable in accordance with the Company’s normal payroll practices.

9. Liquidation Event. Notwithstanding Section 8.3, in the event Executive is terminated without Cause or resigns for Good Reason within eighteen (18) months of a Liquidation Event, all of the following will apply: (a) immediately upon termination, Company will pay to Executive the Severance Amount; (b) one hundred percent (100%) of the shares subject to the Option shall immediately vest and become exercisable; and (c) any Base Salary as shall have accrued but remain unpaid and any un-reimbursed Business Expenses as of the date of Executive’s termination shall immediately become due and payable by Company to Executive.

10. No Conflict of Interest. During the term of Executive's employment with Company, Executive must not engage in any work, paid or unpaid, that creates a conflict of interest with Company. Such work shall include, but is not limited to, directly or indirectly competing with Company in any way, or acting as an officer, director, Executive, consultant, stockholder, volunteer, lender, or agent of any business enterprise of the same nature as, or which is in direct competition with, the business in which Company is now engaged or in which Company becomes engaged during the term of Executive's employment with Company, as may be determined by the Board in its sole discretion. If the Board believes such a conflict exists during the term of this Agreement, the Board may ask Executive to choose to discontinue the other work or resign employment with Company. Executive hereby represents and warrants that acceptance of employment with Company and execution and performance of this Agreement by Executive does not conflict with or violate any provision of or constitute a default under any agreement, judgment, award or decree to which Executive is a party or by which Executive is bound, including, but not limited to, any implied or express agreement with any of Executive's prior employers.

11. Proprietary Information and Inventions Assignment Agreement. Executive agrees to read, sign and abide by PIIA, which is incorporated herein by reference.

12. Parachute Payments.

12.1 If any payment or benefit Executive would receive from the Company pursuant to this Agreement or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment will be equal to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount ((x) or (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive's receipt of the greatest economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a Reduced Amount will give rise to the greater after tax benefit, the reduction in the Payments shall occur in the following order: (a) reduction of cash payments; (b) cancellation of accelerated vesting of equity awards other than stock options; (c) cancellation of accelerated vesting of stock options; and (d) reduction of other benefits paid to Executive. Within any such category of payments and benefits (that is, (a), (b), (c) or (d)), a reduction shall occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A of the Code and then with respect to amounts that are. In the event that acceleration of compensation from Executive's equity awards is to be reduced, such acceleration of vesting shall be canceled, subject to the immediately preceding sentence, in the reverse order of the date of grant.



12.2 The independent registered public accounting firm engaged by Company for general audit purposes as of the day prior to the effective date of the event described in Section 280G(b)(2)(A)(i) of the Code shall perform the foregoing calculations. If the independent registered public accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting such event, Company shall appoint a nationally recognized independent registered public accounting firm to make the determinations required hereunder. Company shall bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder. The independent registered public accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to Company and Executive within thirty (30) calendar days after the date on which Executive's right to a Payment is triggered (if requested at that time by Company or Executive) or such other time as reasonably requested by Company or Executive. Any good faith determinations of the independent registered public accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

12.3 Notwithstanding the above, prior to any reduction in payments and benefits under this Section 6, at Executive's request the Company agrees, if permissible under Section 280G of the Code and applicable law (and subject to any applicable requirements including any requirements that may be applicable to Executive), to solicit a vote of all eligible shareholders of the Company for approval of such amounts such that the compensation will not be subject to the Excise Tax as provided in Q&As 6 and 7 of Section 1.280G-1 of the Treasury Regulations or any superseding provision of such regulations. The Company agrees to take all reasonable steps, in good faith, to solicit such vote if so request

### 13. General Provisions.

13.1 Successors and Assigns. The rights and obligations of Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Company. Executive shall not be entitled to assign any of Executive's rights or obligations under this Agreement.

13.2 Waiver. Either party's failure to enforce any provision of this Agreement shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Agreement.

13.3 Attorneys' Fees. Each side will bear its own attorneys' fees in any dispute unless a statutory section at issue, if any, authorizes the award of attorneys' fees to the prevailing party.

13.4 Severability. In the event any provision of this Agreement is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

13.5 Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Executive and Company and has participated in the negotiation of its terms. Furthermore, Company acknowledges that Company has had an opportunity to review and revise the Agreement and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

13.6 Governing Law; Venue and Jurisdiction. This Agreement shall be governed by and construed under California law, without regard to conflict of laws principles. Any dispute between the parties arising from this Agreement, including any disputes concerning the negotiation, interpretation, validity, performance, breach or enforcement of this Agreement and the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Jose California before one arbitrator, who shall be a retired judge of the San Jose Superior Court or a retired justice of the California Court of Appeal for the Second Appellate District. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the arbitration award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any party who is deemed the prevailing party by the arbitrator shall be entitled to his or its reasonable attorneys' fees and costs. The Company shall bear the costs of the arbitrator, forum and filing fees in connection with any such arbitration.

13.7 Survival. Sections 8, 9, 10, 11, 12 and 13 of this Agreement shall survive any termination of Executive's employment by Company.

13.8 Confidentiality of Terms. Executive agrees to follow Company's strict policy that Executives must not disclose, either directly or indirectly, any information, including any of the terms of this Agreement, regarding salary, bonuses, or stock purchase or option allocations to any person, including other Executives of Company; provided, that Executive may discuss such terms with members of his immediate family and any legal, tax or accounting specialists who provide Executive with individual legal, tax or accounting advice provided, further, that such family members or specialists are bound by similar obligations of confidentiality.

13.9 Notice. Any notices hereunder will be given to the appropriate party at the address, fax number or email address set forth on the signature page hereto, or at such other address as the party will specify in writing. Notice will be deemed given: upon delivery, if sent by email or personal delivery; if sent by fax, upon confirmation of receipt; or if sent by certified mail, postage prepaid, 3 days after the date of mailing.

14. Entire Agreement; Amendments. This Agreement, including the Indemnification Agreement, the PIIA and the Plan and related stock option documents constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This Agreement may be amended or modified only with a signed writing by Company and Executive. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

THE PARTIES TO THIS AGREEMENT HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN. THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.

**EXECUTIVE:**

/s/ Michael Leabman

Michael Leabman

Address:

\_\_\_\_\_  
\_\_\_\_\_

**COMPANY:**

DVINEWAVE, INC.

By: /s/ Stephen Rizzone

Name: Stephen Rizzone

Title: President and CEO

Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “**Agreement**”) is made and entered into as of \_\_\_\_\_ between Dvinewave, Inc., a Delaware corporation (the “**Company**”), and \_\_\_\_\_ (“**Indemnitee**”).

WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, although the furnishing of liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws and Certificate of Incorporation of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”). The Bylaws and Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and Certificate of Incorporation of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

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WHEREAS, Indemnitee does not regard the protection available under the Company's Bylaws and Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified; and

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by other entities and/or organizations which Indemnitee and such other entities and/or organizations intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as an officer or a director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

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(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is, by reason of his Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnatee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnatee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnatee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnatee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnatee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnatee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnatee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnatee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnatee who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the Law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

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(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness, or is made (or asked to) respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

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(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the board: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board of Directors, by the stockholders of the Company. For purposes hereof, disinterested directors are those members of the board of directors of the Company who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board of Directors. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

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(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise (as hereinafter defined) in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board of Directors or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

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(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board of Directors or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

#### 7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

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(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise, of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

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(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) Except as provided in paragraph (c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Except as provided in paragraph (c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) Except as provided in paragraph (c) above, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of Indemnitee or the Fund Indemnitors set forth in Section 8(c) above;

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(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law;

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law;

(d) with respect to remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in the last paragraph of this Section 9 below);

(e) a final judgment or other final adjudication is made that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or

(f) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled.

For purposes of this Section 9, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "**Act**"), or in any registration statement filed with the SEC under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

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11. Security. To the extent requested by Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

13. Definitions. For purposes of this Agreement:

(a) "**Corporate Status**" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "**Enterprise**" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

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(e) **“Independent Counsel”** means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) **“Proceeding”** includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by him or of any inaction on his part while acting as an officer or director of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

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17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:

Dvinewave, Inc.

\_\_\_\_\_

\_\_\_\_\_

Attn: President

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

2. 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 Agreement. This Agreement may also be executed and delivered by facsimile signature and 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.

3. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

4. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably Corporation Service Company as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

***SIGNATURE PAGE FOLLOWS***

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

**COMPANY**

**DVINEWAVE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INDEMNITEE**

\_\_\_\_\_  
Name:  
Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_



DVINEWAVE INC

**CONFIDENTIAL INFORMATION AND  
INVENTION ASSIGNMENT AGREEMENT**

Consultant Name: \_\_\_\_\_

Effective Date: \_\_\_\_\_, 2013

As a condition of my becoming retained (or my consulting relationship being continued) by DVINEWAVE Inc or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the “**Company**”), and in consideration of my consulting relationship with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to the following:

1. **Relationship.** This Agreement will apply to my consulting relationship with the Company. If that relationship ends and the Company, within a year thereafter, either employs me or re-engages me as a consultant, I agree that this Agreement will also apply to such later employment or consulting relationship, unless the Company and I otherwise agree in writing. Any such employment or consulting relationship between the Company and me, whether commenced prior to, upon or after the date of this Agreement, is referred to herein as the “**Relationship**.”

2. **Duties.** I will perform for the Company such duties as may be required pursuant to my consulting agreement with the Company (the “**Consulting Agreement**”).

3. **Confidential Information.**

(a) **Protection of Information.** I understand that during the Relationship, the Company intends to provide me with information, including Confidential Information (as defined below), without which I would not be able to perform my duties to the Company. I agree, at all times during the term of the Relationship and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company to the extent necessary to perform my obligations to the Company under the Relationship, and not to disclose to any person, firm, corporation or other entity, without written authorization from the Company in each instance, any Confidential Information that I obtain, access or create during the term of the Relationship, whether or not during working hours, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations as to the item or items involved. I further agree not to make copies of such Confidential Information except as authorized by the Company.

(b) **Confidential Information.** I understand that “**Confidential Information**” means information and physical material not generally known or available outside the Company and information and physical material entrusted to the Company in confidence by third parties. Confidential Information includes, without limitation: (i) Company Inventions (as defined below); (ii) technical data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, developments, inventions, laboratory notebooks, processes, formulas, techniques, biological materials, mask works, engineering designs and drawings, hardware configuration information, lists of, or information relating to, employees and consultants of the Company (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and consultants), lists of, or information relating to, suppliers and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the Relationship), price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed to me by the Company either directly or indirectly, whether in writing, electronically, orally, or by observation.

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(c) **Third Party Information.** My agreements in this Section 3 are intended to be for the benefit of the Company and any third party that has entrusted information or physical material to the Company in confidence.

(d) **Other Rights.** This Agreement is intended to supplement, and not to supersede, any rights the Company may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information, including without limitation statutory rights of the Company and rights under other contracts or agreements with the Company by which I am bound.

4. **Ownership of Inventions.**

(a) **Inventions Retained and Licensed.** I have attached hereto, as Annex A, a complete list describing with particularity all Inventions (as defined below) that, as of the Effective Date, belong solely to me or belong to me jointly with others, and that relate in any way to any of the Company's actual or proposed businesses, products, services, or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Inventions at the time of signing this Agreement.

(b) **Use or Incorporation of Inventions.** If in the course of the Relationship, I use or incorporate into a product, process or machine any Invention not covered by Section 4(d) of this Agreement in which I have an interest, I will promptly so inform the Company. Whether or not I give such notice, I hereby irrevocably grant to the Company a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with right to transfer and to sublicense, to practice and exploit such Invention and to make, have made, copy, modify, perform, make derivative works of, use, sell, offer to sell, import, and otherwise distribute such Invention under all applicable intellectual property laws without restriction of any kind.

(c) **Inventions.** I understand that "Inventions" means discoveries, developments, concepts, designs, ideas, know how, improvements, inventions, trade secrets and/or original works of authorship, whether or not patentable, copyrightable or otherwise legally protectable. I understand this includes, but is not limited to, any new product, machine, article of manufacture, biological material, method, procedure, process, technique, use, equipment, device, apparatus, system, compound, formulation, composition of matter, design or configuration of any kind, or any improvement thereon. I understand that "Company Inventions" means any and all Inventions that I may solely or jointly author, discover, develop, conceive, or reduce to practice during the period of the Relationship, except as otherwise provided in Section 4(g) below.

(d) **Assignment of Company Inventions.** I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all Company Inventions and all patent, copyright, trademark, trade secret and other intellectual property rights therein. I hereby waive and irrevocably quitclaim to the Company or its designee any and all claims, of any nature whatsoever, that I now have or may hereafter have for infringement of any and all Company Inventions. In the event my Relationship with the Company is at any time determined to be that of an employee for the purposes of the applicable state labor code excerpted in Annex B, I further acknowledge that all Company Inventions that are made by me (solely or jointly with others) within the scope of and during the period of the Relationship are "works made for hire" (to the greatest extent permitted by applicable law) and are compensated by my salary.

(e) **Maintenance of Records.** I agree to keep and maintain adequate and current written records of all Company Inventions made or conceived by me (solely or jointly with others) during the term of the Relationship. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, or any other format. The records will be available to and remain the sole property of the Company at all times. I agree not to remove such records from the Company's place of business except as expressly permitted by Company policy which may, from time to time, be revised at the sole election of the Company for the purpose of furthering the Company's business. I agree to deliver all such records (including any copies thereof) to the Company at the time of termination of the Relationship as provided for in Sections 5 and 6.

(f) **Intellectual Property Rights.** I agree to assist the Company, or its designee, at its expense, in every proper way to secure the Company's, or its designee's, rights in the Company Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company or its designee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company or its designee shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, waive such rights, and in order to assign and convey to the Company or its designee, and any successors, assigns and nominees the sole and exclusive right, title and interest in and to such Company Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue during and at all times after the end of the Relationship and until the expiration of the last such intellectual property right to expire in any country of the world. I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such instruments and papers and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent, copyright, mask work and other registrations related to such Company Inventions. This power of attorney is coupled with an interest and shall not be affected by my subsequent incapacity.

(g) **Exception to Assignments.** I understand that the Company Inventions will not include, and the provisions of this Agreement requiring assignment of inventions to the Company do not apply to, any invention which qualifies fully for exclusion under the provisions of applicable state law, if any, attached hereto as Annex B. In order to assist in the determination of which inventions qualify for such exclusion, I will advise the Company promptly in writing, during and after the term of the Relationship, of all Inventions solely or jointly conceived or developed or reduced to practice by me during the period of the Relationship.

5. **Company Property; Returning Company Documents.** I acknowledge and agree that I have no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages, and voice messages) and that my activity and any files or messages on or using any of those systems may be monitored at any time without notice. I further agree that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. I agree that, at the time of termination of the Relationship, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any of the aforementioned items developed by me pursuant to the Relationship or otherwise belonging to the Company, its successors or assigns.

6. **Termination Certification.** In the event of the termination of the Relationship, I agree to sign and deliver the “**Termination Certification**” attached hereto as **Annex C**; however, my failure to sign and deliver the Termination Certification shall in no way diminish my continuing obligations under this Agreement.

7. **Notice to Third Parties.** I agree that during the periods of time during which I am restricted in taking certain actions by the terms of this Agreement (the “**Restriction Period**”), I shall inform any entity or person with whom I may seek to enter into a business relationship (whether as an owner, employee, independent contractor, or otherwise) of my contractual obligations under this Agreement. I also understand and agree that the Company may, with or without prior notice to me and during or after the term of the Relationship, notify third parties of my agreements and obligations under this Agreement. I further agree that, upon written request by the Company, I will respond to the Company in writing regarding the status of my employment or proposed employment with any party during the Restriction Period.

8. **Solicitation of Employees, Consultants and Other Parties.** As described above, I acknowledge and agree that the Company's Confidential Information includes information relating to the Company's employees, consultants, customers and others, and that I will not use or disclose such Confidential Information except as authorized by the Company. I further agree as follows:

(a) **Employees, Consultants.** I agree that during the term of the Relationship, and for a period of twelve (12) months immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity.

(b) **Other Parties.** I agree that during the term of the Relationship, and for a period of twelve (12) months immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not use any Confidential Information of the Company to negatively influence any of the Company's clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

9. **No Change to Duration of Relationship.** I understand and acknowledge that this Agreement does not alter, amend or expand upon any rights I may have to continue in the consulting relationship with, or in the duration of my consulting relationship with, the Company under any existing agreements between the Company and me, including without limitation the Consulting Agreement, or under applicable law.

10. **Representations and Covenants.**

(a) **Facilitation of Agreement.** I agree to execute promptly, both during and after the end of the Relationship, any proper oath, and to verify any proper document, required to carry out the terms of this Agreement, upon the Company's written request to do so.

(b) **No Conflicts.** I represent that my performance of all the terms of this Agreement does not and will not breach any agreement I have entered into, or will enter into, with any third party, including without limitation any agreement to keep in confidence proprietary information or materials acquired by me in confidence or in trust prior to or during the Relationship. I will not disclose to the Company or use any inventions, confidential or non-public proprietary information or material belonging to any previous client, employer or any other party. I will not induce the Company to use any inventions, confidential or non-public proprietary information, or material belonging to any previous client, employer or any other party. I acknowledge and agree that I have listed on Annex D all agreements (e.g., non-competition agreements, non-solicitation of customers agreements, non-solicitation of employees agreements, confidentiality agreements, inventions agreements, etc.), if any, with a current or former client, employer, or any other person or entity, that may restrict my ability to perform services for the Company or my ability to recruit or engage customers or service providers on behalf of the Company, or otherwise relate to or restrict my ability to perform my duties for the Company or any obligation I may have to the Company. I agree not to enter into any written or oral agreement that conflicts with the provisions of this Agreement.

I further represent that I do not presently perform or intend to perform, during the term of the Consulting Agreement, consulting or other services for, and I am not presently employed by and have no intention of being employed by, companies whose businesses or proposed businesses in any way involve products or services that would be competitive with the Company's products or services, or those products or services proposed or in development by the Company during the term of the Consulting Agreement (except for those companies, if any, listed on Annex D attached hereto). If, however, I decide to do so, I agree that, in advance of accepting such employment or agreeing to perform such services, I will promptly notify the Company in writing, specifying the organization to which I propose to render services, and provide information sufficient to allow the Company to determine if such work would conflict with the interests of the Company.

(c) **Voluntary Execution.** I certify and acknowledge that I have carefully read all of the provisions of this Agreement, that I understand and have voluntarily accepted such provisions, and that I will fully and faithfully comply with such provisions.

#### 11. **General Provisions.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflict of laws.

(b) **Notices.** Notices required or permitted hereunder shall be given in the manner specified in the Consulting Agreement, provided that after the term of the Consulting Agreement, in addition, the Company may also provide notice to me at my most recently known address or other contact information or at any other address or contact information that the Company has reason to believe is likely to be received by me, including at or through an employer of mine or a client or customer of mine. Notice attempted under the immediately preceding sentence but not actually received shall be deemed received for the purposes of this Agreement. I may update my address by providing notice to the Company in accordance with the notice provisions in the Consulting Agreement.

(c) **Entire Agreement.** This Agreement, taken together with the Consulting Agreement, sets forth the entire agreement and understanding between the Company and me relating to its subject matter and merges all prior discussions between us. No amendment to this Agreement will be effective unless in writing signed by both parties to this Agreement. The Company shall not be deemed hereby to have waived any rights or remedies it may have in law or equity, nor to have given any authorizations or waived any of its rights under this Agreement, unless, and only to the extent, it does so by a specific writing signed by a duly authorized officer of the Company, it being understood that, even if I am an officer of the Company, I will not have authority to give any such authorizations or waivers for the Company under this Agreement without specific approval by the Board of Directors. Any subsequent change or changes in my duties, obligations, rights or compensation will not affect the validity or scope of this Agreement.

(d) **Severability.** If one or more of the provisions in this Agreement are deemed void or unenforceable to any extent in any context, such provisions shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts, and the validity and force of the remainder of this Agreement shall not be affected. The Company and I have attempted to limit my right to use, maintain and disclose the Company's Confidential Information, and to limit my right to solicit employees and customers only to the extent necessary to protect the Company from unfair competition. Should a court of competent jurisdiction determine that the scope of the covenants contained in Section 8 exceeds the maximum restrictiveness such court deems reasonable and enforceable, the parties intend that the court should reform, modify and enforce the provision to such narrower scope as it determines to be reasonable and enforceable under the circumstances existing at that time. In the event that any court or government agency of competent jurisdiction determines that, notwithstanding the terms of the Consulting Agreement specifying my Relationship with the Company as that of an independent contractor, my provision of services to the Company is not as an independent contractor but instead as an employee under the applicable laws, then solely to the extent that such determination is applicable, references in this Agreement to the Relationship between me and the Company shall be interpreted to include an employment relationship, and this Agreement shall not be invalid and unenforceable but shall be read to the fullest extent as may be valid and enforceable under the applicable laws to carry out the intent and purpose of the Agreement.

(e) **Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives, and my successors and assigns, and will be for the benefit of the Company, its successors, and its assigns.

(f) **Remedies.** I acknowledge and agree that violation of this Agreement by me may cause the Company irreparable harm, and therefore agree that the Company will be entitled to seek extraordinary relief in court, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security (or, where such a bond or security is required, I agree that a \$1,000 bond will be adequate), in addition to and without prejudice to any other rights or remedies that the Company may have for a breach of this Agreement.

(g) **Counsel for Company.** I hereby acknowledge that I have been advised to seek the advice of independent legal counsel and other advisors in connection with this Agreement and the Other Agreements, if any, and, further, that Much Shelist Denenberg Ament & Rubenstein, P.C. ("**Much Shelist**") is legal counsel for the Company in connection with this Agreement and the other Agreements, if any, and the transactions contemplated hereby and thereby and does not represent the me in any fashion. THIS AGREEMENT HAS BEEN PREPARED BY LEGAL COUNSEL TO THE COMPANY. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE BEEN ADVISED TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL AND HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL. I ALSO ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. EXECUTION OF THIS AGREEMENT BY ME SHALL MEAN THAT I SOUGHT ADVICE FROM INDEPENDENT LEGAL COUNSEL OR DETERMINED THAT SUCH COUNSEL WAS NOT NECESSARY. I hereby agree that any ambiguities in this Agreement shall not be construed against the drafter or by reason of the drafting or preparation hereof.

[Remainder of Page Left Blank Intentionally—Signatures Follow]



The parties have executed this Agreement on the respective dates set forth below, to be effective as of the Effective Date first above written.

**THE COMPANY:**

DVINEWAVE INC

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:  
Attn: President  
DvineWave Inc.  
207 Veritas Ct  
San Ramon, CA 94582

Date: \_\_\_\_\_

**CONSULTANT:**

\_\_\_\_\_  
(PRINT NAME)

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

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

ANNEX A

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP  
EXCLUDED UNDER SECTION 4(a)**

Title	Date	Identifying Number or Brief Description
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\_\_\_ No inventions, improvements, or original works of authorship

\_\_\_ Additional sheets attached

Signature of Consultant: \_\_\_\_\_

Print Name of Consultant: \_\_\_\_\_

Date: \_\_\_\_\_

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**ANNEX B**

Section 2870 of the California Labor Code is as follows:

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

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ANNEX C

**TERMINATION CERTIFICATION**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, flow charts, materials, equipment, other documents or property, or copies or reproductions of any aforementioned items belonging to DVINEWAVE Inc its subsidiaries, affiliates, successors or assigns (collectively, the “Company”).

I further certify that I have complied with all the terms of the Company’s Confidential Information and Invention Assignment Agreement signed by me, including the reporting of any Inventions (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement, and I acknowledge my continuing obligations under that agreement.

I further agree that, in compliance with the Confidential Information and Invention Assignment Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months from the date of this Certification, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company’s employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity.

Further, I agree that for twelve (12) months from the date of this Certification, I shall not use any Confidential Information of the Company to negatively influence any of the Company’s clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

Date: \_\_\_\_\_

**CONSULTANT:**

\_\_\_\_\_  
(Print Consultant’s Name)

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

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ANNEX D

**LIST OF COMPANIES  
EXCLUDED UNDER SECTION 10(B)**

\_\_\_ No conflicts

\_\_\_ Additional sheets attached

Signature of Consultant: \_\_\_\_\_

Print Name of Consultant: \_\_\_\_\_

Date: \_\_\_\_\_

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THIS AMENDED AND RESTATED WARRANT AGREEMENT, DATED AS OF DECEMBER 13, 2013, HEREBY AMENDS AND RESTATES IN ITS ENTIRETY WARRANT NO. W-1 ISSUED BY DVINEWAVE INC. TO MDB CAPITAL GROUP, LLC ON MAY 16, 2013.

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS AGREEMENT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

DVINEWAVE INC.

AMENDED AND RESTATED WARRANT TO PURCHASE COMMON STOCK

Warrant No.: ARW-1

Date of Original Issuance: May 16, 2013 (“**Issuance Date**”)

DvineWave Inc., a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDB Capital Group, LLC, the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the then applicable Per Share Exercise Price (as defined below), upon exercise of this Amended and Restated Warrant (including any warrants to purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Applicable First Exercise Date (as defined below), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), 1,110,131 (subject to the adjustment as provided herein) fully paid and non-assessable shares of Common Stock (the “**Warrant Shares**”). As set forth herein, the exercise price may be paid in cash or through a Cashless Exercise provision. Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. “**Applicable First Exercise Date**” shall mean six (6) months after the date of the Initial Public Offering (the “**IPO Date**”); except that this Warrant may be exercised before the IPO Date contingent upon the closing of any Fundamental Transaction and the holder may exercise its put right in the event of an Illiquid Exit Transaction.

The Holder acknowledges that this Warrant is issued pursuant to that certain engagement agreement dated January 23, 2013 between the Company and Holder for certain strategic consulting services (the “**Engagement Agreement**”), specifically to satisfy the Company’s obligation under Section 2(a) thereof to issue a warrant. In accordance with such Engagement Agreement, the Company acknowledges receipt of Holder’s payment of One Thousand Five Hundred Dollars (\$1,500) made to the Company within three (3) Business Days of the Issuance Date. Without limiting Company’s obligation to pay any cash portion of compensation to holder in connection with the transactions contemplated by the Securities Purchase Agreement (the “**Bridge Financing Transaction**”), Holder acknowledges that Company has satisfied all obligations to issue a warrant or other equity compensation to Holder under the terms of the Engagement Agreement in connection with the Bridge Financing Transaction.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f), this Warrant may be exercised by the Holder, in whole or in part, by delivery (whether via facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant. Within one (1) Trading Day following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Per Share Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the “**Extended Exercise Price**”) in cash or via wire transfer of immediately available funds to an account of the Company specified by the Company if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder; however, if this Warrant is fully exercised, at the request of the Company the Holder shall either promptly return the original of this Warrant for cancellation or promptly certify to the Company that the Warrant has been cancelled or destroyed. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1<sup>st</sup>) Trading Day following the date on which the Company has received a fully-completed and executed Exercise Notice, the Company shall transmit by facsimile or email (with an attachment in PDF format) an acknowledgment of confirmation of receipt of such an Exercise Notice, in the form attached hereto as **Exhibit B**, to the Holder and the Company’s transfer agent (the “**Transfer Agent**”). On or before the third (3<sup>rd</sup>) Trading Day following the date on which the Company has received such Exercise Notice and received the Extended Exercise Price, if the Holder did not notify the Company in the Exercise Notice that the exercise was made pursuant to a Cashless Exercise, the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to the exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/ Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the Holder or, at the Holder’s instruction pursuant to the Exercise Notice, the Holder’s agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Business Days (subject to surrender of the original of this Warrant to the Company for cancellation or certification from the Holder that the original of this Warrant has been cancelled or destroyed) after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the Holder shall only exercise this Warrant for a whole number of shares, and if the Holder exercises this Warrant for a number of shares that includes a fractional share (by reason of Cashless Exercise or otherwise) the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant.

(b) Exercise Price. The term “**Per Share Exercise Price**” shall mean \$0.01 per Warrant Share.

(c) Number of Shares. The total number of Warrant Shares subject to this Warrant is set forth in the first paragraph of the preamble of this Warrant. Upon any exercise of this Warrant, the remaining number of Warrant Shares subject to this Warrant will be reduced by the number of shares with respect to which this Warrant is exercised, which, for the avoidance of doubt, in the case of Cashless Exercise will be greater than the number of shares received upon such exercise.

(d) Company’s Failure to Timely Deliver Securities. If the Company is a Reporting Company (as herein defined) and the Company improperly fails, to issue to the Holder within three (3) Trading Days after receipt of the applicable Exercise Notice, properly indicating the exercise amount and whether or not it is by Cashless Exercise (the “**Required Delivery Date**”), (x) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or (y) to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant (as the case may be) (a “**Delivery Failure**”), and if on or after the business day immediately following the Required Delivery Date the Holder (or any other Person on behalf of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock Holder so anticipated receiving from the Company as a result of such exercise, then, in addition to all other remedies available to the Holder, the Company shall, within four (4) Business Days after the Holder’s request, in the Holder’s discretion, either (I) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the “**Buy-In Price**”), at which point the Company’s obligation to so issue and deliver such certificate or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Exercise Notice and ending on the date of such issuance and payment under this clause (II). “**Reporting Company**” shall mean a company subject to the periodic reporting requirements under Sections 13 or 15(d) of the Securities Exchange Act.

(e) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), whether or not at the time of such exercise a registration statement is effective (or the prospectus contained therein is available for use) for the resale by the Holder of all of the Warrant Shares, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Extended Exercise Price, elect instead to receive upon such exercise the “**Net Number**” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):



$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the Bid Price of the Common Stock as of the time of the Holder’s execution of the applicable Exercise Notice if such Exercise Notice is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of “regular trading hours” on such Trading Day, or (iv) if the Common Stock is not listed on any Eligible Market and “B” is determined in connection with an Illiquid Exit Transaction, the fair market value of the Common Stock as determined by the Appraiser in its sole discretion.

C= the Per Share Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(f) Disputes. In the case of a dispute as to the determination of the Per Share Exercise Price or the arithmetic calculation of the number of Warrant Shares issuable hereunder generally or to be issued pursuant to the terms hereof upon a Cashless Exercise, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(g) Insufficient Authorized Shares. The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock as shall be necessary to satisfy the Company’s obligation to issue shares of Common Stock hereunder (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant). If, notwithstanding the foregoing, and not in limitation thereof, at any time while any of this Warrant remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant, then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the number of shares necessary to satisfy the Company’s obligations hereunder. Without limiting the generality of the foregoing sentence, if not earlier approved by written consent of the stockholders, as soon as practicable after the date of the occurrence of the failure to have sufficient authorized shares to permit the exercise of this Warrant (“**Authorized Share Failure**”), but in no event later than seventy (70) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock; in connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(h) Registration Rights. The Holder will have the piggy-back and demand registration rights set forth in a separate registration rights agreement to be executed and delivered by the Company on the date of initial issuance of this Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Per Share Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. (i) Without limiting any provision of Section 4, if the Company, at any time on or after the date of the original issuance date of this Warrant and while this Warrant remains outstanding and is not completely exercised, (A) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (B) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (C) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares (the events in clauses (A), (B) and (C) are “**Adjustment Events**”), then in each such case the Per Share Exercise Price then in effect shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event (i.e., a proportional adjustment), and the number of Warrant Shares for which this Warrant is exercisable shall be inversely proportionally adjusted so that such adjusted number of Warrant Shares multiplied by such adjusted Per Share Exercise Price shall be equal to the number of Warrant Shares for which this Warrant was exercisable immediately prior to such adjustment multiplied by Per Share Exercise Price in effect as of immediately prior to such adjustment. Any adjustment made pursuant to clause (A) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (B) or (C) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Other Events. In the event that the Company (or any subsidiary or affiliate of the Company) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, an “**Other Adjustment Event**”), then the Company’s board of directors shall in good faith determine and implement an appropriate adjustment in the Per Share Exercise Price and number of Warrant Shares, provided that no such adjustment pursuant to this Section 2(b) will increase the Per Share Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2; provided further that if the Holder does not reasonably accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company’s board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne by the Company. For the avoidance of doubt, an “**Other Adjustment Event**” shall not include a bona fide financing transaction in which the Company sells its securities for the principal purpose of raising working capital or other operating capital or any issuance or grant to an employee, director or consultant of the Company (or any subsidiary or affiliate of the Company) under an incentive stock plan approved by the board of directors of the Company.

(c) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest cent or the nearest 1/100<sup>th</sup> of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if at any time the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Warrant while this Warrant remains outstanding, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2(a) or 2(b) above, if at any time while this Warrant remains outstanding and is not fully exercised, the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) **Fundamental Transactions.** So long as this Warrant remains outstanding and is not fully exercised, the Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and Registration Rights Agreement in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction (which approval shall not be unreasonably withheld, conditioned or delayed), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, exercisability for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) or (ii) the Successor Entity (including for this purpose any applicable Parent Entity rather than such Successor Entity itself) assumes in writing all the obligations of the Company under this Warrant and the Successor Entity is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market (the **“Resulting Stock”**) and this Warrant becomes exercisable for Resulting Stock or (iii) the Fundamental Transaction is an Illiquid Exit Transaction and the Successor Entity (including for this purpose any applicable Parent Entity rather than such Successor Entity itself) stands ready to or tenders to perform or otherwise obligates itself in writing to perform the obligations under Section 4(c) below, including without limitation to pay the Put Price to Holder upon timely election of the Holder to exercise its put rights thereunder by delivering a Put Notice. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and, to the extent applicable under clause (i) above (if applicable), the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other applicable Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. In connection with any Fundamental Transaction, Holder will consider and negotiate in good faith any proposed change to this Warrant or the Transaction Documents requested in good faith by the Successor Entity. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of Resulting Stock (or its equivalent) of the Successor Entity (including, if applicable, the applicable Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted as may be applicable in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder (but without duplication of proceeds or consideration under Section 3 or 4(a) above or otherwise), while this Warrant is outstanding, prior to the consummation of each Fundamental Transaction and pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a **“Corporate Event”**), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. After a Fundamental Transaction in which the proceeds paid to holders of shares Common Stock are entirely or substantially all cash (a **“Cash Exit Transaction”**), upon exercise of this Warrant in lieu of shares of Common Stock, but without limiting Holder’s rights under Sections 3 and 4(a), the holder shall receive such amount of cash equal to the amount that Holder would have received had such exercise occurred immediately prior to the closing of such Cash Exit Transaction; in connection with any Cash Exit Transaction, Holder may deliver an Exercise Notice contingent on the consummation of such Cash Exit transaction.

(c) **Put Right.** In the event of an Illiquid Exit Transaction, notwithstanding the foregoing and the provisions of Section 4(b) above, at the signed written request of the Holder, before the consummation of such Illiquid Exit Transaction to the Company, or, after the consummation of such Illiquid Exit Transaction to the Successor Entity or to the Parent Entity of the Successor Entity (as the case may be, the “**IET Buyer**”), that the Warrant be purchased under this Section 4(b) (the “**Put Notice**”), such Put Notice to be delivered or not in the sole discretion of the Holder at any time during the Put Notice Period, the Company or, after the consummation of such Illiquid Exit Transaction, the IET Buyer (as the case may be, the “**Put Purchaser**”) shall purchase this Warrant from the Holder upon the Put Closing Date for a cash payment in the amount of the Put Price. The “**Put Notice Period**” shall begin on the earliest to occur of (i) the public disclosure or notice to the Holder from the Company of any Illiquid Exit Transaction or (ii) the Holder first becoming aware of any Illiquid Exit Transaction, and shall end on the date that is ninety (90) days after the earliest to occur of (A) public disclosure of the consummation of such Illiquid Exit Transaction by the Company pursuant to a Current Report on Form 8-K filed with the SEC or (B) notice to the Holder from the Put Purchaser that such Illiquid Exit Transaction has been consummated. If applicable, at its own election or the written election of the Holder, the Put Purchaser shall use commercially reasonable efforts to engage, at the expense of the Put Purchaser within the later of two (2) Business Days after receipt such election or within five (5) Business Days after receipt of the Put Notice if the Holder and the Put Purchaser have not agreed upon the Put Price within three (3) Business Days, the Appraiser to determine the Appraised Value. The “**Put Closing Date**” shall occur only if such Illiquid Exit Transaction is consummated, and shall occur on the date of the consummation of such Illiquid Exit Transaction or, if the Put Notice is received after the consummation of such Illiquid Exit Transaction, shall occur on a date selected by the IET Buyer within thirty (30) days of receipt of the Put Notice by the IET Buyer; provided that if the Put Price has not been determined before the Put Closing Date, the Put Closing Date shall be on a date that is selected by the IET Buyer that is within three (3) Business Days of such determination of the Put Price. Promptly after the delivery of the Put Notice, Holder and the Put Purchaser will attempt in good faith to agree upon the Put Price. The “**Put Price**” shall be the amount agreed by Holder and the Put Purchaser, or at the election of either Holder or the Put Purchaser shall be the Appraised Value; provided that if the Holder so notifies the Put Purchaser in the Put Notice the Put Price shall, notwithstanding anything in the contrary in this definition, be an amount equal to the “Net Number” (as defined in Section 1(e)) multiplied by the number “B” (as determined in accordance such Section 1(e)). “**Appraised Value**” means an amount in U.S. Dollars equal the value determined by the Appraiser, as of the date of the consummation of the Illiquid Exit Transaction, of the proceeds of the Illiquid Exit Transaction that would have been received by the Holder had the Holder immediately prior to the consummation of such Illiquid Exit Transaction had exercised this Warrant in full pursuant to a Cashless Exercise and received the proceeds from the consummation of such Illiquid Exit Transaction attributable to the Common Stock that would have been received upon such Cashless Exercise. “**Appraiser**” shall mean Valuation Research Corporation (“**VRC**”) or if VRC is unavailable, Duff & Phelps (“**Duff**”) or if Duff is unavailable such other appraiser of similar standing that is selected by Holder and reasonably acceptable to the Company. The Put Purchaser shall instruct the Appraiser to determine the Appraised Value within ten (10) Business Days after the Appraiser receives the submissions of the Holder and the Put Purchaser, solely on the basis of the submissions of the Holder and the Put Purchaser (the “**Appraisal Parties**”) and, subject to clause (y) below, not on the basis of an independent review; the Put Purchaser shall instruct the Appraiser: (x) to assign a value as to any particular asset, liability or other item relevant to its determination no higher than the highest value asserted by either of the Appraisal Parties and no lower than the lowest value asserted by either of the Appraisal Parties, (y) to draw inferences and make conclusions in its own discretion based on the submissions of the Appraisal Parties but in the event that at least one Appraisal Party has failed to address a necessary item or factor required for the Appraiser’s determination to use such information from a source other than the submissions of the Appraisal Parties as the Appraiser deems appropriate to expeditiously complete its determination, and (z) in the event the consideration paid or to be paid in the Illiquid Exit Transaction is subject to escrow for indemnity relating to representations, warranties or non-compliance with covenants under the documents governing such Illiquid Exit Transaction, to deem the consideration as received for the purposes of determining the Appraised Value, but in the event the consideration to be paid is subject to an earn out or future contingency, to determine that the Put Price may be paid in installments once such earn out or future contingency is determined in accordance with one or more installments based on an aggregate Appraised Value apportioned among such installments. The Put Purchaser and the Holder shall make their submissions within ten (10) Business Days of the engagement of the Appraiser, but the Appraiser shall, in its sole discretion be permitted to consider late submissions to the extent the Appraiser determines that the late submission was delayed for good reason and the late submission would materially affect its determination. In the event that there is a dispute regarding any matter that has been agreed to be resolved pursuant to Section 13, the Put Purchaser shall instruct the Appraiser to delay commencement of work until such dispute has been resolved in accordance with Section 13, and the Appraiser shall consider as conclusive the determination of the investment bank or accounting firm made under Section 13 with respect to such matter. In the event that either the Put Purchaser or the Holder assert to the Appraiser that the consideration to be received pursuant to the consummation of such Illiquid Exit Transaction cannot be determined because the provisions governing such consideration (the “**Proceeds Provisions**”) are under negotiation or are otherwise not final, the Put Purchaser and the Holder shall nevertheless make their submissions, but will be permitted to make supplemental submissions within five (5) Business Days of learning that such Proceeds Provisions have become final, and the Appraiser will not deliver its report until it has reviewed such final Proceeds Provisions and any timely submissions regarding such final Proceeds Provisions. The Put Purchaser shall instruct the Appraiser to deliver a written report determining the Appraised Value together with a reasonably detailed written summary of reasons supporting such determination. The Appraised Value shall be final and binding on the Holder and the Put Purchaser in the absence of fraud or manifest error. Upon payment of the Put Price to the Holder from any source (including without limitation out of any escrow established for the Illiquid Exit Transaction), this Warrant shall be deemed cancelled, and the Holder shall surrender the original of this Warrant to the Put Purchaser for cancellation or deliver a Lost Warrant Affidavit within three (3) Business Days after such payment.

(d) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events while this Warrant is outstanding and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder in accordance with the terms hereof. Without limiting the generality of the foregoing, while this Warrant remains outstanding the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Per Share Exercise Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant, including pursuant to Section 1(g).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, so long as this Warrant is outstanding, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. The rights and obligations of the Registration Rights Agreement may be assigned and transferred with any transfer of this Warrant upon the agreement of such transferee to be joined to and bound by such Registration Rights Agreement, provided, that for the avoidance of doubt, the Holder together with all transferees will collectively have no greater rights under such Registration Rights Agreement than the Holder would have alone under such Registration Rights Agreement; and, provided further, in the event of any disagreement between the Company and Holder (or any holder(s) of a warrant(s) issued upon transfer(s) for this Warrant or such other warrant(s)) or between the Company and any party to the Registration Rights Agreement, the interpretation of this Warrant (and any other warrant(s) issued upon transfer(s) of this Warrant or such other warrant(s)) shall be governed exclusively by the agreement of the Company and the holders of warrants representing a majority of remaining exercisable Warrant Shares under such warrants (this proviso is the “**Interpretation Proviso**”). For the abundance of clarity, there is no restriction on the assignment and transfer of this Warrant and the Registration Rights Agreement, other than as provided by law, rule and regulation and any specific agreements between the Holder and the Company, including those binding on Holder as a result of receiving this Warrant directly or indirectly as a result of transfer from a prior holder.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below (each a “**Lost Warrant Affidavit**”) shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form, and reasonably acceptable to the Company, and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant; provided that, for the avoidance of doubt, such this Warrant and any new Warrants in the hands of transferees shall be subject to the Interpretation Proviso.

8. **NOTICES.** The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, so long as this Warrant is outstanding, the Company will give written notice to the Holder (i) promptly, but in any event within five (5) days, after each adjustment of the Per Share Exercise Price or the number of Warrant Shares is adjusted (other than as a result of an adjustment to the Per Share Exercise Price), as may be applicable, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect any dividend or distribution in the form of any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to the holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that if the Company is a Reporting Company such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder and (iii) at least ten (10) Trading Days prior to the consummation of any Fundamental Transaction. If the Company is a Reporting Company, to the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Company shall no later than simultaneously file such notice with the SEC (as defined in the Securities Purchase Agreement) pursuant to a Current Report on Form 8-K.

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) when sent, if sent by e-mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient) and (iv) if sent by overnight courier service, one (1) Trading Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. If notice is given by facsimile or email, a copy of such notice shall be dispatched no later than the next business day by first class mail, postage prepaid. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Company:

DvineWave Inc.  
207 Veritas Ct.  
San Ramon, CA 94582  
E-mail: mleabman@dvinewave.com  
Attention: Michael Leabman, President

With a copy (for informational purposes only) to:

K&L Gates LLP  
214 North Tyron Street, 47th Floor  
Charlotte, NC 28202  
Fax Number: 704.353.3141



E-mail: mark.busch@klgates.com  
Attention: Mark R. Busch, Esq.

If to a Holder, to its address, facsimile number or e-mail address set forth herein or on the books and records of the Company.

Or, in each of the above instances, to such other address, facsimile number or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party at least five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iv) above, respectively. A copy of the e-mail transmission containing the time, date and recipient e-mail address shall be rebuttable evidence of receipt by e-mail in accordance with clause (iii) above.

9. **AMENDMENT AND WAIVER.** Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. Holder shall be entitled, at its option, to the benefit of any amendment of any other similar warrant. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. **SEVERABILITY.** If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. **GOVERNING LAW.** This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and Holder each hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY AND HOLDER EACH HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. **CONSTRUCTION; HEADINGS.** This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. Terms used in this Warrant but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date (as defined in the Securities Purchase Agreement) in such other Transaction Documents unless otherwise consented to in writing by the Holder.

13. **DISPUTE RESOLUTION.** In the case of a dispute as to the determination of the Per Share Exercise Price or the number of Warrant Shares for which this Warrant is exercisable or the number of Warrant Shares to be issued upon a Cashless Exercise, or the Closing Sale Price or the Bid Price, or other fair market value (other than the Appraised Value in connection with Holder's exercise of its put rights under Section 4(c) in connection with an Illiquid Exit Transaction, which shall be determined by the Appraiser) if applicable, the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or if later within two (2) Business Days after receipt of formal notice from the other party that there is a disagreement and that such party is invoking dispute resolution under this Section 13 (the "**Dispute Resolution Notice**") or (ii) if no notice gave rise to such dispute but either Company or Holder learns that there is a disagreement, within two (2) Business Days after receipt of a Dispute Resolution Notice. After dispatch and receipt of any Dispute Resolution Notice, Holder and the Company will meet and confer (in person or, at the election of either party, by telephone) to attempt in good faith to resolve the disagreement. If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) within three (3) Business Days (the Business Day following the end of such three (3) Business Day period is the "**Submission Deadline**") of the later of (x) the receipt of the Dispute Resolution or (y) three (3) Business Days after the request for or receipt of (whichever occurs first) each other's disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, on or about the Submission Deadline submit (a) the disputed determination or calculation of Closing Sale Price or the Bid Price or other applicable fair market value (as the case may be) to an independent, reputable investment bank of national standing selected by the Holder and reasonably acceptable to the Company (if Holder has provided contact information to engage such a bank, or if Holder has not provided such information, an investment bank selected by the Company that is reasonably acceptable to Holder) or (b) any other disputed determination or calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and request that the investment bank or accountant notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. In the event the disputed calculation or determination is determined to be within three percent (3%) of the Company's determination, the Holder shall reimburse the Company for the fees of such investment bank or accountant in connection with their work on the disagreement, and if Holder does not reimburse the Company within five (5) Business Days (or if earlier, before the next cash payment from the Company to the Holder is due under this Warrant), the Company may, at the Company's election, but shall not be required to offset such fees against any amounts owed by the Holder to the Company from time to time, or may, at the Company's election, but shall not be required to, reduce the number of Warrant Shares for which this Warrant is exercisable as if the Holder had effected a Cashless Exercise hereunder for a number of shares sufficient to repay such amount owed in the form of cancellation of the shares issued upon such deemed Cashless Exercise at a value per such share equal to the value determined as "B" under Section 1(e) hereof as of the date of the last day of such five (5) Business Day Period.

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the Registration Rights Agreement and any other agreements between the Company and one or more of the Holders, at law or in equity (including a decree of specific performance and/or other injunctive relief); provided, the Holder or any Person claiming through or by right of the Holder shall not be entitled to any duplication or multiplication of damages (such as but not limited to a recovery or mitigation of damages in the form of exercise of Buy-In Rights followed by pursuit by Holder of damages that would be duplicative of such recovery or mitigation); provided further that the Company shall not be liable for incidental or consequential damages for any failure by the Company to comply with the terms of this Warrant even if the Company has been advised of the possibility thereof. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations to issue Warrant Shares on exercise hereof will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company, subject to applicable law and any other agreements between the Company and the Holder or any previous holder of a warrant that transferred directly or indirectly this Warrant to the Holder.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **"Bid Price"** means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(b) “**Bloomberg**” means Bloomberg, L.P.

(c) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) “**Closing Sale Price**” means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(e) “**Common Stock**” means (i) the Company’s shares of common stock, \$0.00001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(f) “**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(g) “**Eligible Market**” means The New York Stock Exchange, the NYSE Amex, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(h) “**Expiration Date**” means the date that is the fifth (5<sup>th</sup>) anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a “**Holiday**”), the next date that is not a Holiday.

(i) **“Fundamental Transaction”** means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company already held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (5) (I) reorganize, recapitalize or reclassify the Common Stock, (II) effect or consummate a stock combination, reverse stock split (other than a stock split or reverse stock split effected in connection with an underwritten initial public offering in consultation with the underwriter for such public offering (the **“Authorized Reverse Split”**)) or other similar transaction involving the Common Stock or (III) make any public announcement or disclosure with respect to any stock combination, reverse stock split (other than solely with respect to the Authorized Reverse Split) or other similar transaction involving the Common Stock (including, without limitation, any public announcement or disclosure of (x) any potential, possible or actual stock combination, reverse stock split (other than the Authorized Reverse Split) or other similar transaction involving the Common Stock or (y) board or stockholder approval thereof, or the intention of the Company to seek board or stockholder approval of any stock combination, reverse stock split (other than the Authorized Reverse Split) or other similar transaction involving the Common Stock), or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Securities Exchange Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(j) An **“Illiquid Exit Transaction”** means a Fundamental Transaction of any of the following types if the consideration received by the Company or the holders of the Company’s Common Stock, as may be applicable, in connection with such Fundamental Transaction is neither substantially or entirely (i) cash or an obligation to pay cash or (ii) Liquid Public Stock: (A) a Fundamental Transaction contemplated in Section 16(i)(i)(1) where the Company is not the surviving Person in such Fundamental Transaction or, as may be applicable in the event of a transaction involving a subsidiary of the Company, the Company is not the Parent Entity after the consummation of such Fundamental Transaction; (B) a Fundamental Transaction contemplated in Section 16(i)(i)(2); (C) a Fundamental Transaction contemplated by Section 16(i)(i)(3) after which the Common Stock of the Company would not be listed on the Principal Market or on any Eligible Market or in the event that the Company or, as applicable, the Successor Entity would not undertake an obligation for the benefit of Holder to maintain such listing until at least five (5) years after the date of such Fundamental Transaction; (D) a Fundamental Transaction contemplated by Section 16(i)(i)(4); or (E) a Fundamental Transaction contemplated by Section 16(ii) after which the Common Stock of the Company would not be listed on the Principal Market or on any Eligible Market or in the event that the Company or, as applicable, the Successor Entity would not undertake an obligation for the benefit of Holder to maintain such listing until at least five (5) years after the date of such Fundamental Transaction.

(k) The **“Initial Public Offering”** is defined as the consummation of a firm commitment underwritten initial public offering of the Company’s Common Stock that raises at least \$10,000,000 in gross proceeds.

(l) **“Liquid Public Stock”** with respect to any Fundamental Transaction means consideration for such Fundamental Transaction in the form of common stock or another class or series of capital stock of that is registered and freely tradable and listed or quoted on any Eligible Market.

(m) **“Notes”** means those certain convertible secured promissory notes of the Company offered in a private placement and issued under the terms of the Securities Purchase Agreements entered into by various investors with the Company, all of like tenor, initially dated on or about May 16, 2013.

(n) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) **“Principal Market”** means the a national securities exchange in the United States or a recognized United States trading medium which provides daily reports of the prices at which securities are offered and traded.

(r) **“Registration Rights Agreement”** means the registration rights agreement of even date herewith to which the initial Holder of this Warrant and the Company are party.

(s) **“Securities Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time, together with the regulations promulgated thereunder.

(t) **“Securities Purchase Agreement”** means that certain agreement to purchase convertible secured notes of the Company, which agreement is between the investors in the offering of the Notes on the one hand and the Company on the other hand, entered into on or about May 16, 2013.

(u) **“Successor Entity”** means the Person (or, if so elected by the Holder or otherwise applicable, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder or otherwise applicable, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(v) **“Trading Day”** means, as applicable, (x) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(w) “**Voting Stock**” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

17. MARKET STAND-OFF. In connection with the initial public offering of the Company’s securities, if any, and upon request of the managing or lead underwriter made to the Company in connection with such offering, Holder will agree with the Company and the underwriter not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration, if any) without the prior written consent of the managing or lead underwriter of such offering, for a period of time (not to exceed three hundred sixty five (365) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting requirements binding on such Holder that are substantially consistent with this Section 17 as may be requested by the underwriters at the time of such offering; provided, however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16) day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 17 shall continue to apply until the end of the third (3rd) trading day following the expiration of the fifteen (15) day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond four hundred and one (401) days after the effective date of the registration statement. In order to enforce the restriction set forth above or any other restriction agreed by Holder, including without limitation any restriction requested by the underwriters of any initial public offering of the securities of the Company agreed by such Holder, the Company may impose stop-transfer instructions with respect to any security acquired under or subject to this Agreement until the end of the applicable stand-off period. The Company’s underwriters shall be beneficiaries of the agreement set forth in this Section 17.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the Company has caused this Amended and Restated Warrant to purchase Common Stock to be duly executed as of this 13<sup>th</sup> day of December 2013.

**DVINEWAVE INC.**

By: /s/ Stephen Rizzone

Name: Stephen Rizzone

Title: Chief Executive Officer

Acknowledged and Agreed:

**MDB CAPITAL GROUP LLC**

By: /s/ Anthony DiGiandomenico

Name: Anthony DiGiandomenico

Title: Authorized Principal

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EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS  
WARRANT TO PURCHASE COMMON STOCK

DVINEWAVE INC.

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“**Warrant Shares**”) of DvineWave Inc., a Delaware corporation (the “**Company**”), evidenced by the Warrant to purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Extended Exercise Price shall be made as:

\_\_\_\_\_ a “Cash Exercise” with respect to \_\_\_\_\_ Warrant Shares;  
and/or

\_\_\_\_\_ a “Cashless Exercise” with respect to \_\_\_\_\_ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at \_\_\_\_\_ [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was \$\_\_\_\_\_.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the Extended Exercise Price in the sum of \$\_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

**ACKNOWLEDGMENT**

The Company hereby acknowledges this Exercise Notice and hereby directs \_\_\_\_\_ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated \_\_\_\_\_, 20\_\_, from the Company and acknowledged and agreed to by \_\_\_\_\_.

**DVINEWAVE INC.**

By: \_\_\_\_\_  
Name:  
Title:

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THIS AMENDED AND RESTATED WARRANT AGREEMENT, DATED AS OF DECEMBER 13, 2013, HEREBY AMENDS AND RESTATES IN ITS ENTIRETY WARRANT NO. W-2 ISSUED BY DVINEWAVE INC. TO MDB CAPITAL GROUP, LLC ON MAY 16, 2013.

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS AGREEMENT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

DVINEWAVE INC.

AMENDED AND RESTATED WARRANT TO PURCHASE COMMON STOCK

Warrant No.: ARW-2

Date of Original Issuance: May 16, 2013 (“**Issuance Date**”)

DvineWave Inc., a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDB Capital Group, LLC, the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the then Applicable Per Share Exercise Price (as defined below), upon exercise of this Amended and Restated Warrant shares of Common Stock (including any warrants to purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Applicable First Exercise Date (as defined below), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), a number of fully paid and non-assessable shares of Common Stock (the “**Warrant Shares**”) determined in accordance herewith by dividing the then remaining Aggregate Exercise Price (as defined below) by the Applicable Per Share Exercise Price. As set forth herein, the exercise price may be paid in cash or through a Cashless Exercise provision. Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. “**Applicable First Exercise Date**” shall mean six (6) months after the date of the Initial Public Offering (the “**IPO Date**”); except that this Warrant may be exercised before the IPO Date contingent upon the closing of any Fundamental Transaction and the holder may exercise its put right in the event of an Illiquid Exit Transaction.

The Holder acknowledges that this Warrant is issued pursuant to that certain engagement agreement dated January 23, 2013 between the Company and Holder for certain investment banking services (the “**Engagement Agreement**”), specifically to satisfy the Company’s obligation under Section 2(b) thereof to issue a warrant. In accordance with such Engagement Agreement, the Company acknowledges receipt of Holder’s payment of One Thousand Dollars (\$1,000) made to the Company within three (3) Business Days of the Issuance Date. Without limiting Company’s obligation to pay the cash portion of compensation due to holder in connection with the transactions contemplated by the Securities Purchase Agreement (the “**Bridge Financing Transaction**”), Holder acknowledges that Company has satisfied all obligations to issue a warrant or other equity compensation to Holder under the terms of the Engagement Agreement in connection with the Bridge Financing Transaction.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f), this Warrant may be exercised by the Holder, in whole or in part, by delivery (whether via facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant. Within one (1) Trading Day following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Applicable Per Share Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the “**Extended Exercise Price**”) in cash or via wire transfer of immediately available funds to an account of the Company specified by the Company if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder; however, if this Warrant is fully exercised, at the request of the Company the Holder shall either promptly return the original of this Warrant for cancellation or promptly certify to the Company that the Warrant has been cancelled or destroyed. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1<sup>st</sup>) Trading Day following the date on which the Company has received a fully-completed and executed Exercise Notice, the Company shall transmit by facsimile or email (with an attachment in PDF format) an acknowledgment of confirmation of receipt of such an Exercise Notice, in the form attached hereto as **Exhibit B**, to the Holder and the Company’s transfer agent (the “**Transfer Agent**”). On or before the third (3<sup>rd</sup>) Trading Day following the date on which the Company has received such Exercise Notice and received the Extended Exercise Price, if the Holder did not notify the Company in the Exercise Notice that the exercise was made pursuant to a Cashless Exercise, the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to the exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/ Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the Holder or, at the Holder’s instruction pursuant to the Exercise Notice, the Holder’s agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Business Days (subject to surrender of the original of this Warrant to the Company for cancellation or certification from the Holder that the original of this Warrant has been cancelled or destroyed) after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the Holder shall only exercise this Warrant for a whole number of shares, and if the Holder exercises this Warrant for a number of shares that includes a fractional share (by reason of Cashless Exercise or otherwise) the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant.

(b) Exercise Price. The term “**Applicable Per Share Exercise Price**” shall mean, as applicable 120% of: (A) the Base Initial Per Share Exercise Price, (B) the Base Adjusted Per Share Exercise Price, or (C) in the event of a Fundamental Transaction that occurs before the Initial Public Offering, the greater of the Base Initial Per Share Exercise Price or the Conversion Price (as defined in the Notes) at which any Notes are converted or are (whether or not there are then any Notes outstanding) eligible to be converted into Common Stock in connection with such Fundamental Transaction. For purposes of this Warrant, whether or not there are then any Notes outstanding: (i) the “**Aggregate Exercise Price**” initially will be \$550,000, (ii) the “**Base Initial Per Share Exercise Price**” shall initially be \$0.52 per share, and (iii) at any time upon or after the Initial Public Offering the “**Base Adjusted Per Share Exercise Price**” shall initially be the Conversion Price applicable to the Notes (or that would have been applicable to the Notes at the time of the Initial Public Offering, if fully converted before the Initial Public Offering) in connection with such Initial Public Offering under Section 3(a) of the Notes.

(c) Number of Shares. The total number of Warrant Shares subject to this Warrant will be calculated based on the initial Aggregate Exercise Price (or if divided by reason of a transfer or sale of the Warrant, the proportionate amount of such Aggregate Exercise Price) and the number shares for which this Warrant has been previously exercised and the Applicable Per Share Exercise Price(s) at the time of such previous exercise(s), divided by the then Applicable Per Share Exercise Price. Upon any exercise of this Warrant, the Aggregate Exercise Price remaining under this Warrant will be reduced by the amount of the Extended Exercise Price paid or, in the case of a Cashless Exercise deemed paid, (which for these purposes will be the number of shares for which this Warrant is so exercised, multiplied at the time of such exercise by the Applicable Per Share Exercise Price). For example, (i) if upon the Issuance Date the Aggregate Exercise Price is \$550,000; if thereafter while the Base Initial Per Share Exercise Price is applicable and is \$0.52 per share the Holder exercises for cash with respect to 100,000 Warrant Shares, the Holder would receive 100,000 shares of Common Stock, and the remaining Aggregate Exercise Price would be \$487,600 (i.e., \$550,000 less 120% x \$52,000); (iii) if thereafter while the Base Adjusted Per Share Exercise Price is applicable and \$1.00 per share, the Holder exercises in a Cashless Exercise in respect of 100,000 Warrant shares at a time when a Closing Sale Price (i.e., “B” in the Cashless Exercise Formula) applies and is \$10.00 per share, the Holder would receive 88,000 shares (i.e.,  $((100,000 \times \$10.00) - (100,000 \times 120\% \times \$1.00)) / \$10.00 = (\$1,000,000 - \$120,000) / \$10.00 = \$880,000 / \$10.00 = 88,000$  shares) and the Aggregate Exercise Price would be further reduced (by  $100,000 \times 120\% \times \$1.00 = \$120,000$ ) to \$367,600.

(d) Company’s Failure to Timely Deliver Securities. If the Company is a Reporting Company (as herein defined) and the Company improperly fails, to issue to the Holder within three (3) Trading Days after receipt of the applicable Exercise Notice, properly indicating the exercise amount and whether or not it is by Cashless Exercise (the “**Required Delivery Date**”), (x) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or (y) to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant (as the case may be) (a “**Delivery Failure**”), and if on or after the business day immediately following the Required Delivery Date the Holder (or any other Person on behalf of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock Holder so anticipated receiving from the Company as a result of such exercise, then, in addition to all other remedies available to the Holder, the Company shall, within four (4) Business Days after the Holder’s request, in the Holder’s discretion, either (I) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the “**Buy-In Price**”), at which point the Company’s obligation to so issue and deliver such certificate or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Exercise Notice and ending on the date of such issuance and payment under this clause (II). “**Reporting Company**” shall mean a company subject to the periodic reporting requirements under Sections 13 or 15(d) of the Securities Exchange Act.

(e) **Cashless Exercise.** Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), whether or not at the time of such exercise a registration statement is effective (or the prospectus contained therein is available for use) for the resale by the Holder of all of the Warrant Shares, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Extended Exercise Price, elect instead to receive upon such exercise the “Net Number” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the Bid Price of the Common Stock as of the time of the Holder’s execution of the applicable Exercise Notice if such Exercise Notice is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of “regular trading hours” on such Trading Day, or (iv) if the Common Stock is not listed on any Eligible Market and “B” is determined in connection with an Illiquid Exit Transaction, the fair market value of the Common Stock as determined by the Appraiser in its sole discretion.

C= the Applicable Per Share Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(f) Disputes. In the case of a dispute as to the determination of the Applicable Per Share Exercise Price or the arithmetic calculation of the number of Warrant Shares issuable hereunder generally or to be issued pursuant to the terms hereof upon a Cashless Exercise, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(g) Insufficient Authorized Shares. The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock hereunder (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant). If, notwithstanding the foregoing, and not in limitation thereof, at any time while any of this Warrant remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant, then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the number of shares necessary to satisfy the Company's obligations hereunder. Without limiting the generality of the foregoing sentence, if not earlier approved by written consent of the stockholders, as soon as practicable after the date of the occurrence of the failure to have sufficient authorized shares to permit the exercise of this Warrant ("**Authorized Share Failure**"), but in no event later than seventy (70) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock; in connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(h) Registration Rights. The Holder will have the piggy-back and demand registration rights set forth in a separate registration rights agreement to be executed and delivered by the Company on the date of initial issuance of this Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Applicable Per Share Exercise Price and, indirectly, the number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. (i) Without limiting any provision of Section 4, if the Company, at any time on or after the date of the original issuance date of this Warrant and while this Warrant remains outstanding and is not completely exercised, (A) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (B) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (C) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares (the events in clauses (A), (B) and (C) are "**Adjustment Events**"), then in each such case the Base Initial Per Share Exercise Price and the Base Adjusted Per Share Exercise then in effect shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event (i.e., a proportional adjustment). Any adjustment made pursuant to clause (A) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (B) or (C) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Aggregate Exercise Price; Number of Warrant Shares. The Aggregate Exercise Price shall not be adjusted by this Section 2. Subject to the provisions of Section 2(c), the number of Warrant Shares subject to this Warrant generally will be adjusted through the provisions of Section 1(c), and not the provisions of Section 2(a).

(c) Other Events. In the event that the Company (or any subsidiary or affiliate of the Company) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, an “**Other Adjustment Event**”), then the Company’s board of directors shall in good faith determine and implement an appropriate adjustment in the Base Initial Per Share Exercise Price and Base Adjusted Per Share Exercise Price, as the case may be and, under the unexpected circumstances in which the then effective Aggregate Exercise Price divided by 120% of the Base Initial Per Share Exercise Price or 120% of the Base Adjusted Per Share Exercise Price, as the case may be, is not a reasonable good faith measure of the appropriate number of Warrant Shares to be obtainable under this Warrant, an adjustment in the Aggregate Exercise Price in addition to an adjustment in the Base Initial Per Share Exercise Price or Base Adjusted Per Share Exercise Price shall be made so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 2(c) will increase the Base Initial Per Share Exercise Price or Base Adjusted Per Share Exercise Price or decrease the Aggregate Exercise Price as otherwise determined pursuant to this Section 2, provided further that if the Holder does not reasonably accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company’s board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne by the Company. For the avoidance of doubt, an “**Other Adjustment Event**” shall not include a bona fide financing transaction in which the Company sells its securities for the principal purpose of raising working capital or other operating capital or any issuance or grant to an employee, director or consultant of the Company (or any subsidiary or affiliate of the Company) under an incentive stock plan approved by the board of directors of the Company.

(d) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest cent or the nearest 1/100<sup>th</sup> of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if at any time the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Warrant while this Warrant remains outstanding, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.



#### 4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 1(b)(ii) or Section 2(a) or 2(c) above, if at any time while this Warrant remains outstanding and is not fully exercised, the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) Fundamental Transactions. So long as this Warrant remains outstanding and is not fully exercised, the Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and Registration Rights Agreement in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction (which approval shall not be unreasonably withheld, conditioned or delayed), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, exercisability for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) or (ii) the Successor Entity (including for this purpose any applicable Parent Entity rather than such Successor Entity itself) assumes in writing all the obligations of the Company under this Warrant and the Successor Entity is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market (the “**Resulting Stock**”) and this Warrant becomes exercisable for Resulting Stock or (iii) the Fundamental Transaction is an Illiquid Exit Transaction and the Successor Entity (including for this purpose any applicable Parent Entity rather than such Successor Entity itself) stands ready to or tenders to perform or otherwise obligates itself in writing to perform the obligations under Section 4(c) below, including without limitation to pay the Put Price to Holder upon timely election of the Holder to exercise its put rights thereunder by delivering a Put Notice. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and, to the extent applicable under clause (i) above (if applicable), the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other applicable Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. In connection with any Fundamental Transaction, Holder will consider and negotiate in good faith any proposed change to this Warrant or the Transaction Documents requested in good faith by the Successor Entity. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of Resulting Stock (or its equivalent) of the Successor Entity (including, if applicable, the applicable Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted as may be applicable in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder (but without duplication of proceeds or consideration under Section 3 or 4(a) above or otherwise), while this Warrant is outstanding, prior to the consummation of each Fundamental Transaction and pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. After a Fundamental Transaction in which the proceeds paid to holders of shares Common Stock are entirely or substantially all cash (a “**Cash Exit Transaction**”), upon exercise of this Warrant in lieu of shares of Common Stock, but without limiting Holder’s rights under Sections 3 and 4(a), the holder shall receive such amount of cash equal to the amount that Holder would have received had such exercise occurred immediately prior to the closing of such Cash Exit Transaction; in connection with any Cash Exit Transaction, Holder may deliver an Exercise Notice contingent on the consummation of such Cash Exit transaction.

(c) **Put Right.** In the event of an Illiquid Exit Transaction, notwithstanding the foregoing and the provisions of Section 4(b) above, at the signed written request of the Holder, before the consummation of such Illiquid Exit Transaction to the Company, or, after the consummation of such Illiquid Exit Transaction to the Successor Entity or to the Parent Entity of the Successor Entity (as the case may be, the “**IET Buyer**”), that the Warrant be purchased under this Section 4(b) (the “**Put Notice**”), such Put Notice to be delivered or not in the sole discretion of the Holder at any time during the Put Notice Period, the Company or, after the consummation of such Illiquid Exit Transaction, the IET Buyer (as the case may be, the “**Put Purchaser**”) shall purchase this Warrant from the Holder upon the Put Closing Date for a cash payment in the amount of the Put Price. The “**Put Notice Period**” shall begin on the earliest to occur of (i) the public disclosure or notice to the Holder from the Company of any Illiquid Exit Transaction or (ii) the Holder first becoming aware of any Illiquid Exit Transaction, and shall end on the date that is ninety (90) days after the earliest to occur of (A) public disclosure of the consummation of such Illiquid Exit Transaction by the Company pursuant to a Current Report on Form 8-K filed with the SEC or (B) notice to the Holder from the Put Purchaser that such Illiquid Exit Transaction has been consummated. If applicable, at its own election or the written election of the Holder, the Put Purchaser shall use commercially reasonable efforts to engage, at the expense of the Put Purchaser within the later of two (2) Business Days after receipt such election or within five (5) Business Days after receipt of the Put Notice if the Holder and the Put Purchaser have not agreed upon the Put Price within three (3) Business Days, the Appraiser to determine the Appraised Value. The “**Put Closing Date**” shall occur only if such Illiquid Exit Transaction is consummated, and shall occur on the date of the consummation of such Illiquid Exit Transaction or, if the Put Notice is received after the consummation of such Illiquid Exit Transaction, shall occur on a date selected by the IET Buyer within thirty (30) days of receipt of the Put Notice by the IET Buyer; provided that if the Put Price has not been determined before the Put Closing Date, the Put Closing Date shall be on a date that is selected by the IET Buyer that is within three (3) Business Days of such determination of the Put Price. Promptly after the delivery of the Put Notice, Holder and the Put Purchaser will attempt in good faith to agree upon the Put Price. The “**Put Price**” shall be the amount agreed by Holder and the Put Purchaser, or at the election of either Holder or the Put Purchaser shall be the Appraised Value; provided that if the Holder so notifies the Put Purchaser in the Put Notice the Put Price shall, notwithstanding anything in the contrary in this definition, be an amount equal to the “Net Number” (as defined in Section 1(e)) multiplied by the number “B” (as determined in accordance such Section 1(e)). “**Appraised Value**” means an amount in U.S. Dollars equal the value determined by the Appraiser, as of the date of the consummation of the Illiquid Exit Transaction, of the proceeds of the Illiquid Exit Transaction that would have been received by the Holder had the Holder immediately prior to the consummation of such Illiquid Exit Transaction had exercised this Warrant in full pursuant to a Cashless Exercise and received the proceeds from the consummation of such Illiquid Exit Transaction attributable to the Common Stock that would have been received upon such Cashless Exercise. “**Appraiser**” shall mean Valuation Research Corporation (“**VRC**”) or if VRC is unavailable, Duff & Phelps (“**Duff**”) or if Duff is unavailable such other appraiser of similar standing that is selected by Holder and reasonably acceptable to the Company. The Put Purchaser shall instruct the Appraiser to determine the Appraised Value within ten (10) Business Days after the Appraiser receives the submissions of the Holder and the Put Purchaser, solely on the basis of the submissions of the Holder and the Put Purchaser (the “**Appraisal Parties**”) and, subject to clause (y) below, not on the basis of an independent review; the Put Purchaser shall instruct the Appraiser: (x) to assign a value as to any particular asset, liability or other item relevant to its determination no higher than the highest value asserted by either of the Appraisal Parties and no lower than the lowest value asserted by either of the Appraisal Parties, (y) to draw inferences and make conclusions in its own discretion based on the submissions of the Appraisal Parties but in the event that at least one Appraisal Party has failed to address a necessary item or factor required for the Appraiser’s determination to use such information from a source other than the submissions of the Appraisal Parties as the Appraiser deems appropriate to expeditiously complete its determination, and (z) in the event the consideration paid or to be paid in the Illiquid Exit Transaction is subject to escrow for indemnity relating to representations, warranties or non-compliance with covenants under the documents governing such Illiquid Exit Transaction, to deem the consideration as received for the purposes of determining the Appraised Value, but in the event the consideration to be paid is subject to an earn out or future contingency, to determine that the Put Price may be paid in installments once such earn out or future contingency is determined in accordance with one or more installments based on an aggregate Appraised Value apportioned among such installments. The Put Purchaser and the Holder shall make their submissions within ten (10) Business Days of the engagement of the Appraiser, but the Appraiser shall, in its sole discretion be permitted to consider late submissions to the extent the Appraiser determines that the late submission was delayed for good reason and the late submission would materially affect its determination. In the event that there is a dispute regarding any matter that has been agreed to be resolved pursuant to Section 13, the Put Purchaser shall instruct the Appraiser to delay commencement of work until such dispute has been resolved in accordance with Section 13, and the Appraiser shall consider as conclusive the determination of the investment bank or accounting firm made under Section 13 with respect to such matter. In the event that either the Put Purchaser or the Holder assert to the Appraiser that the consideration to be received pursuant to the consummation of such Illiquid Exit Transaction cannot be determined because the provisions governing such consideration (the “**Proceeds Provisions**”) are under negotiation or are otherwise not final, the Put Purchaser and the Holder shall nevertheless make their submissions, but will be permitted to make supplemental submissions within five (5) Business Days of learning that such Proceeds Provisions have become final, and the Appraiser will not deliver its report until it has reviewed such final Proceeds Provisions and any timely submissions regarding such final Proceeds Provisions. The Put Purchaser shall instruct the Appraiser to deliver a written report determining the Appraised Value together with a reasonably detailed written summary of reasons supporting such determination. The Appraised Value shall be final and binding on the Holder and the Put Purchaser in the absence of fraud or manifest error. Upon payment of the Put Price to the Holder from any source (including without limitation out of any escrow established for the Illiquid Exit Transaction), this Warrant shall be deemed cancelled, and the Holder shall surrender the original of this Warrant to the Put Purchaser for cancellation or deliver a Lost Warrant Affidavit within three (3) Business Days after such payment.

(d) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events while this Warrant is outstanding and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder in accordance with the terms hereof. Without limiting the generality of the foregoing, while this Warrant remains outstanding the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Applicable Per Share Exercise Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant, including pursuant to Section 1(g).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, so long as this Warrant is outstanding, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. The rights and obligations of the Registration Rights Agreement may be assigned and transferred with any transfer of this Warrant upon the agreement of such transferee to be joined to and bound by such Registration Rights Agreement, provided, that for the avoidance of doubt, the Holder together with all transferees will collectively have no greater rights under such Registration Rights Agreement than the Holder would have alone under such Registration Rights Agreement; and, provided further, in the event of any disagreement between the Company and Holder (or any holder(s) of a warrant(s) issued upon transfer(s) for this Warrant or such other warrant(s)) or between the Company and any party to the Registration Rights Agreement, the interpretation of this Warrant (and any other warrant(s) issued upon transfer(s) of this Warrant or such other warrant(s)) shall be governed exclusively by the agreement of the Company and the holders of warrants representing a majority of remaining Aggregate Exercise Price amounts under such warrants (this proviso is the “**Interpretation Proviso**”). For the abundance of clarity, there is no restriction on the assignment and transfer of this Warrant and the Registration Rights Agreement, other than as provided by law, rule and regulation and any specific agreements between the Holder and the Company, including those binding on Holder as a result of receiving this Warrant directly or indirectly as a result of transfer from a prior holder.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below (each a “**Lost Warrant Affidavit**”) shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form, and reasonably acceptable to the Company, and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares (based on the portion of the Aggregate Exercise Price) as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares (based on the Aggregate Exercise Price) then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder (based on the applicable portion of the Aggregate Exercise Price) which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant (i.e., does not exceed in the aggregate the Aggregate Exercise Price)), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant; provided that, for the avoidance of doubt, such this Warrant and any new Warrants in the hands of transferees shall be subject to the Interpretation Proviso.

8. NOTICES. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, so long as this Warrant is outstanding, the Company will give written notice to the Holder (i) promptly, but in any event within five (5) days, after each adjustment of the Base Initial Per Share Exercise Price or Base Adjusted Per Share Exercise Price, as may be applicable (or in the unexpected event that the Base Aggregate Exercise Price is adjusted or the number of Warrant Shares is adjusted (other than as a result of adjustment of the Base Initial Per Share Exercise Price or the Base Adjusted Per Share Exercise Price)), setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect any dividend or distribution in the form of any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to the holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that if the Company is a Reporting Company such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder and (iii) at least ten (10) Trading Days prior to the consummation of any Fundamental Transaction. If the Company is a Reporting Company, to the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Company shall no later than simultaneously file such notice with the SEC (as defined in the Securities Purchase Agreement) pursuant to a Current Report on Form 8-K.

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) when sent, if sent by e-mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient) and (iv) if sent by overnight courier service, one (1) Trading Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. If notice is given by facsimile or email, a copy of such notice shall be dispatched no later than the next business day by first class mail, postage prepaid. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Company:

DvineWave Inc.  
207 Veritas Ct.  
San Ramon, CA 94582  
E-mail: mleabman@dvinewave.com  
Attention: Michael Leabman, President

With a copy (for informational purposes only) to:

K&L Gates LLP  
214 North Tyron Street, 47th Floor  
Charlotte, NC 28202  
Fax Number: 704.353.3141  
E-mail: mark.busch@klgates.com  
Attention: Mark R. Busch, Esq.

If to a Holder, to its address, facsimile number or e-mail address set forth herein or on the books and records of the Company.

Or, in each of the above instances, to such other address, facsimile number or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party at least five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iv) above, respectively. A copy of the e-mail transmission containing the time, date and recipient e-mail address shall be rebuttable evidence of receipt by e-mail in accordance with clause (iii) above.

9. **AMENDMENT AND WAIVER.** Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. Holder shall be entitled, at its option, to the benefit of any amendment of any other similar warrant. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. **SEVERABILITY.** If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. **GOVERNING LAW.** This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company and Holder each hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY AND HOLDER EACH HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. **CONSTRUCTION; HEADINGS.** This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. Terms used in this Warrant but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date (as defined in the Securities Purchase Agreement) in such other Transaction Documents unless otherwise consented to in writing by the Holder.

13. **DISPUTE RESOLUTION.** In the case of a dispute as to the determination of the Base Initial Per Share Exercise Price or the Base Adjusted Per Share Exercise Price (as applicable) or the Applicable Exercise Price, the Closing Sale Price or the Bid Price, or other fair market value (other than the Appraised Value in connection with Holder's exercise of its put rights under Section 4(c) in connection with an Illiquid Exit Transaction, which shall be determined by the Appraiser) if applicable or the Aggregate Exercise Price or the number of Warrant Shares for which this Warrant is exercisable or the number of Warrant Shares to be issued upon a Cashless Exercise, the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or if later within two (2) Business Days after receipt of formal notice from the other party that there is a disagreement and that such party is invoking dispute resolution under this Section 13 (the "**Dispute Resolution Notice**") or (ii) if no notice gave rise to such dispute but either Company or Holder learns that there is a disagreement, within two (2) Business Days after receipt of a Dispute Resolution Notice. After dispatch and receipt of any Dispute Resolution Notice, Holder and the Company will meet and confer (in person or, at the election of either party, by telephone) to attempt in good faith to resolve the disagreement. If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) within three (3) Business Days (the Business Day following the end of such three (3) Business Day period is the "**Submission Deadline**") of the later of (x) the receipt of the Dispute Resolution or (y) three (3) Business Days after the request for or receipt of (whichever occurs first) each other's disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, on or about the Submission Deadline submit (a) the disputed determination or calculation of Closing Sale Price or the Bid Price or other applicable fair market value (as the case may be) to an independent, reputable investment bank of national standing selected by the Holder and reasonably acceptable to the Company (if Holder has provided contact information to engage such a bank, or if Holder has not provided such information, an investment bank selected by the Company that is reasonably acceptable to Holder) or (b) any other disputed determination or calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and request that the investment bank or accountant notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. In the event the disputed calculation or determination is determined to be within three percent (3%) of the Company's determination, the Holder shall reimburse the Company for the fees of such investment bank or accountant in connection with their work on the disagreement, and if Holder does not reimburse the Company within five (5) Business Days (or if earlier, before the next cash payment from the Company to the Holder is due under this Warrant), the Company may, at the Company's election, but shall not be required to offset such fees against any amounts owed by the Holder to the Company from time to time, or may, at the Company's election, but shall not be required to, reduce Aggregate Exercise Price hereunder as if the Holder had effected a Cashless Exercise hereunder for a number of shares sufficient to repay such amount owed in the form of cancellation of the shares issued upon such deemed Cashless Exercise at a value per such share equal to the value determined as "B" under Section 1(e) hereof as of the date of the last day of such five (5) Business Day Period.

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the Registration Rights Agreement and any other agreements between the Company and one or more of the Holders, at law or in equity (including a decree of specific performance and/or other injunctive relief); provided, the Holder or any Person claiming through or by right of the Holder shall not be entitled to any duplication or multiplication of damages (such as but not limited to a recovery or mitigation of damages in the form of exercise of Buy-In Rights followed by pursuit by Holder of damages that would be duplicative of such recovery or mitigation); provided further that the Company shall not be liable for incidental or consequential damages for any failure by the Company to comply with the terms of this Warrant even if the Company has been advised of the possibility thereof. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations to issue Warrant Shares on exercise hereof will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company, subject to applicable law and any other agreements between the Company and the Holder or any previous holder of a warrant that transferred directly or indirectly this Warrant to the Holder.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **"Bid Price"** means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(b) **"Bloomberg"** means Bloomberg, L.P.



(c) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) **“Closing Sale Price”** means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(e) **“Common Stock”** means (i) the Company’s shares of common stock, \$0.00001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(f) **“Convertible Securities”** means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(g) **“Eligible Market”** means The New York Stock Exchange, the NYSE Amex, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the Principal Market.

(h) **“Expiration Date”** means the date that is the fifth (5<sup>th</sup>) anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next date that is not a Holiday.

(i) **“Fundamental Transaction”** means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company already held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (5) (I) reorganize, recapitalize or reclassify the Common Stock, (II) effect or consummate a stock combination, reverse stock split (other than a stock split or reverse stock split effected in connection with an underwritten initial public offering in consultation with the underwriter for such public offering (the **“Authorized Reverse Split”**)) or other similar transaction involving the Common Stock or (III) make any public announcement or disclosure with respect to any stock combination, reverse stock split (other than solely with respect to the Authorized Reverse Split) or other similar transaction involving the Common Stock (including, without limitation, any public announcement or disclosure of (x) any potential, possible or actual stock combination, reverse stock split (other than the Authorized Reverse Split) or other similar transaction involving the Common Stock or (y) board or stockholder approval thereof, or the intention of the Company to seek board or stockholder approval of any stock combination, reverse stock split (other than the Authorized Reverse Split) or other similar transaction involving the Common Stock), or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Securities Exchange Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(j) An “**Illiquid Exit Transaction**” means a Fundamental Transaction of any of the following types if the consideration received by the Company or the holders of the Company’s Common Stock, as may be applicable, in connection with such Fundamental Transaction is neither substantially or entirely (i) cash or an obligation to pay cash or (ii) Liquid Public Stock: (A) a Fundamental Transaction contemplated in Section 16(i)(i)(1) where the Company is not the surviving Person in such Fundamental Transaction or, as may be applicable in the event of a transaction involving a subsidiary of the Company, the Company is not the Parent Entity after the consummation of such Fundamental Transaction; (B) a Fundamental Transaction contemplated in Section 16(i)(i)(2); (C) a Fundamental Transaction contemplated by Section 16(i)(i)(3) after which the Common Stock of the Company would not be listed on the Principal Market or on any Eligible Market or in the event that the Company or, as applicable, the Successor Entity would not undertake an obligation for the benefit of Holder to maintain such listing until at least five (5) years after the date of such Fundamental Transaction; (D) a Fundamental Transaction contemplated by Section 16(i)(i)(4); or (E) a Fundamental Transaction contemplated by Section 16(ii) after which the Common Stock of the Company would not be listed on the Principal Market or on any Eligible Market or in the event that the Company or, as applicable, the Successor Entity would not undertake an obligation for the benefit of Holder to maintain such listing until at least five (5) years after the date of such Fundamental Transaction.

(k) The “**Initial Public Offering**” is defined as the consummation of a firm commitment underwritten initial public offering of the Company’s Common Stock that raises at least \$10,000,000 in gross proceeds.

(l) “**Liquid Public Stock**” with respect to any Fundamental Transaction means consideration for such Fundamental Transaction in the form of common stock or another class or series of capital stock of that is registered and freely tradable and listed or quoted on any Eligible Market.

(m) “**Notes**” means those certain convertible secured promissory notes of the Company offered in a private placement and issued under the terms of the Securities Purchase Agreements entered into by various investors with the Company, all of like tenor, initially dated on or about May 16, 2013.

(n) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) “**Principal Market**” means the a national securities exchange in the United States or a recognized United States trading medium which provides daily reports of the prices at which securities are offered and traded.

(r) “**Registration Rights Agreement**” means the registration rights agreement of even date herewith to which the initial Holder of this Warrant and the Company are party.

(s) “**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, together with the regulations promulgated thereunder.

(t) “**Securities Purchase Agreement**” means that certain agreement to purchase convertible secured notes of the Company, which agreement is between the investors in the offering of the Notes on the one hand and the Company on the other hand, entered into on or about May 16, 2013.

(u) “**Successor Entity**” means the Person (or, if so elected by the Holder or otherwise applicable, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder or otherwise applicable, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(v) “**Trading Day**” means, as applicable, (x) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(w) “**Voting Stock**” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

17. **MARKET STAND-OFF.** In connection with the initial public offering of the Company's securities, if any, and upon request of the managing or lead underwriter made to the Company in connection with such offering, Holder will agree with the Company and the underwriter not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration, if any) without the prior written consent of the managing or lead underwriter of such offering, for a period of time (not to exceed three hundred sixty five (365) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting requirements binding on such Holder that are substantially consistent with this Section 17 as may be requested by the underwriters at the time of such offering; provided, however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16) day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 17 shall continue to apply until the end of the third (3rd) trading day following the expiration of the fifteen (15) day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond four hundred and one (401) days after the effective date of the registration statement. In order to enforce the restriction set forth above or any other restriction agreed by Holder, including without limitation any restriction requested by the underwriters of any initial public offering of the securities of the Company agreed by such Holder, the Company may impose stop-transfer instructions with respect to any security acquired under or subject to this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Section 17.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the Company has caused this Amended and Restated Warrant to purchase Common Stock to be duly executed as of this 13<sup>th</sup> day of December 2013.

**DVINEWAVE INC.**

By: /s/ Stephen Rizzone

Name: Stephen Rizzone

Title: Chief Executive Officer

Acknowledged and Agreed:

**MDB CAPITAL GROUP LLC**

By: /s/ Anthony DiGiandomenico

Name: Anthony DiGiandomenico

Title: Authorized Principal

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EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK

DVINEWAVE INC.

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“Warrant Shares”) of DvineWave Inc., a Delaware corporation (the “Company”), evidenced by the Warrant to purchase Common Stock (the “Warrant”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Extended Exercise Price shall be made as:

\_\_\_\_\_ a “Cash Exercise” with respect to \_\_\_\_\_ Warrant Shares; and/or

\_\_\_\_\_ a “Cashless Exercise” with respect to \_\_\_\_\_ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at \_\_\_\_\_ [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was \$\_\_\_\_\_.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the Extended Exercise Price in the sum of \$\_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

**ACKNOWLEDGMENT**

The Company hereby acknowledges this Exercise Notice and hereby directs \_\_\_\_\_ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated \_\_\_\_\_, 20\_\_, from the Company and acknowledged and agreed to by \_\_\_\_\_.

**DVINEWAVE INC.**

By: \_\_\_\_\_  
Name:  
Title:

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## REGISTRATION RIGHTS AGREEMENT FOR WARRANT HOLDERS

**THIS REGISTRATION RIGHTS AGREEMENT** (this “Agreement”) is made as of May 16, 2013, by and among DvineWave Inc., a Delaware corporation (“Company”), and the persons listed on Schedule A hereto, which persons are the holders of certain warrants (the “Warrants”) to purchase Common Stock, issued by the Company in connection with an offering of convertible notes and the provision of strategic advisory services, referred to individually as the “Holder” and collectively as the “Holders”. Certain terms are defined in Section 13 hereof.

WHEREAS, in connection with an offering of convertible notes and the provision of strategic advisory services, the Holders have received Warrants, which are exercisable for Common Stock in accordance with the terms thereof; such shares of Common Stock acquired by the Holders or issuable to the Holders and their assignees or successors in interest upon proper exercise of the Warrants, are referred to collectively as “Registrable Securities”.

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Holder hereby agree as follows:

### 1. Registration.

(a) Piggyback Registrations Rights. Subject to the inapplication of this provision in connection with an Initial Public Offering (as hereinafter defined) as stated below, if, at any time after the Company becomes a Reporting Company through the date that is five years after the date the Company becomes a Reporting Company, there is not an effective Registration Statement covering the Registrable Securities, and the Company shall determine to prepare and file with the Commission a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8, each as promulgated under the Securities Act, or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit, or a registration in which the only stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered, or any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities) then the Company shall send to the Holders a written notice of such determination at least twenty (20) days prior to the filing of any such Registration Statement and shall, include in such Registration Statement all Registrable Securities requested by any Holder hereunder to be included in the registration within ten (10) days after the Company sends such notice to the Holders (the “Piggyback Shares”) for resale and offer on a continuous basis pursuant to Rule 415; provided, however, that (i) if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the Registration Statement filed in connection with such registration, the Company determines for any reason not to proceed with such registration, the Company will be relieved of its obligation to register any Registrable Securities in connection with such registration, (ii) in case of a determination by the Company to delay registration of its securities, the Company will be permitted to delay the registration of Registrable Securities for the same period as the delay in registering such other securities, (iii) each Holder is subject to confidentiality obligations with respect to any information gained in this process or any other material non-public information he, she or it obtains, (iv) each Holder or assignee or successor in interest is subject to all applicable laws relating to insider trading or similar restrictions; and (v) if all of the Registrable Securities of the Holders cannot be so included due to Commission Comments or Underwriter Cutbacks, then the Company may reduce, in accordance with the provisions of Section 1(c) hereof, the number of securities covered by such Registration Statement to the maximum number which would enable the Company to conduct such offering in accordance with the provisions of Rule 415 or that would be consistent with the managing underwriter’s assessment regarding the successful completion of the offering. For an abundance of clarity, the piggyback registration rights set forth in this Agreement do not grant any right to have any shares of Common Stock or other security of the Company, including the Registrable Securities and the Piggyback Shares, included as part of the offering or for resale on a registration statement filed or declared effective in connection with the consummation of the Company’s initial public offering of its securities (the “Initial Public Offering”)

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(b) Initial Piggyback Registration Statement. At the election of each Holder, the Company shall be required to include up to all Piggyback Shares held by such Holder for resale and offer on a continuous basis pursuant to Rule 415 in the first Registration Statement for an offering that is not the Company's Initial Public Offering ("Initial Piggyback Registration Statement"); *provided, however*, that if all of the Registrable Securities of the Holders cannot be so included due to Commission Comments or Underwriter Cutbacks, then the Company may reduce, in accordance with the provisions of Section 1(c) hereof, the number of securities covered by the Initial Piggyback Registration Statement to the maximum number which would enable the Company to conduct such offering in accordance with the provisions of Rule 415 or that would be consistent with the managing underwriter's assessment regarding the successful completion of the offering.

(c) Cutback Provisions. In the event all of the Registrable Securities cannot be or are not included in a Registration Statement due to Commission Comments or Underwriter Cutbacks, the Company and the Holders agree that securities shall be removed from such Registration Statement in the following order until no further removal is required by Commission Comments or Underwriter Cutbacks:

(i) First, any securities held by any former employee, consultant or affiliate of the Company shall be removed, pro rata based on the number of securities being registered for such former employees, consultants or affiliates held by all of the former employees of the Company and any of their affiliates and successors in interest, whether pursuant to agreement or otherwise and any other person with any registration rights outstanding on the date hereof;

(ii) Second, the securities held by MDB Capital Group LLC and its members and affiliates, if any, (A) obtained solely by reason of providing services to the Company, which are being registered pursuant to any registration rights agreement to which MDB Capital Group LLC and the Company are party or (B) any securities held by MDB Capital Group LLC or its members or affiliates which were acquired in open market transactions from persons or entities in whose hands the shares were not restricted securities (and not from the Company or any Holder or any Person who purchase their securities directly from the Company) upon payment of a purchase price in cash after the Company's Initial Public Offering; and

(iii) Third, the securities held by parties to that certain Registration Rights Agreement for Investors of even date herewith, by and among the Company and the other parties thereto (the "Investor Registration Agreement"), shall be removed, pro rata based on the number of Registrable Shares held by each Holder in comparison to the number of Registrable Securities held by all Holders who have requested to include any Registrable Securities in the Registration Statement.

In the event of a conflict between the priority of cutbacks under this Agreement and the Investor Registration Agreement, the Investor Registration Agreement shall govern.

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(d) Mandatory Registrations. In the event all of the Piggyback Shares of the Holders are not included in a Registration Statement due to Commission Comments, the Company shall prepare and file an additional Registration Statement (the “Follow-up Registration Statement”) with the Commission within sixty (60) days following the effectiveness of the previously filed Registration Statement; *provided, however*, that the time period for filing the Follow-up Registration shall be extended to the extent that the Commission publishes written Commission Guidance or the Company receives written Commission Guidance which provides for a longer period before a Follow-up Registration Statement may be filed. The Follow-up Registration Statement shall cover the resale of all of the Registrable Securities that were excluded from any previously filed Registration Statement. In the event that all of the Piggyback Shares have not been registered in a Registration Statement after the Follow-up Registration Statement has been declared effective, the Company shall use commercially reasonable efforts thereafter to register any remaining unregistered Registrable Securities, subject to the provisions of Section 1(e) hereof.

(e) Filing; Content. The Company will use its commercially reasonable efforts to cause each Registration Statement pursuant to which any Registrable Securities are included, including the Initial or Follow-up Registration Statement, to contain the Plan of Distribution substantially similar to that attached hereto as Schedule B (which, for the avoidance of doubt, may be modified to respond to comments, if any, received by the Commission or suggestions of the managing underwriter). The Company shall use its commercially reasonable efforts to cause any Registration Statement filed under this Section 1, including the Initial and Follow-up Registration Statement, to be declared effective under the Securities Act as promptly as practicable after the filing thereof and shall keep such Registration Statement continuously effective under the Securities Act until the earlier of (i) one year after its Effective Date (provided, however, the one year period shall be extended for any Grace Period), (ii) such time as all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holders, or (iii) such time as all of the Registrable Securities covered by such Registration Statement may be sold by the Holders pursuant to Rule 144 without regard to both the volume limitations for sales as provided in Rule 144 and the limitations for such sales provided in Rule 144(i), if applicable, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holder (“Effectiveness Period”). By 5:00 p.m. (New York City time) on the business day immediately following the Effective Date of a Registration Statement, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement (whether or not such filing is technically required under such Rule).

(f) Termination of Registration Rights. The registration rights afforded to the Holders under this Section 1 shall terminate on the earliest date when all Registrable Securities of the Holder either: (i) have been publicly sold by the Holder pursuant to a Registration Statement, (ii) have been covered by an effective Registration Statement which has been effective for an aggregate period of sixteen (16) months (whether or not consecutive), provided, however, the time period shall be calculated so as to exclude any Grace Period, or (iii) may be sold by the Holder pursuant to Rule 144 without regard to both the volume limitations for sales as provided in Rule 144 and the limitations for such sales provided in Rule 144(i), if applicable, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holder.

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## 2. Demand Registration Rights.

(a) Demand Right. Commencing on the date that is one hundred eighty (180) days after the Company becomes a Reporting Company, the Holders as a group representing at least 50% of the Registrable Securities (a “Requesting Group”) shall have a separate one-time right (i.e., a one-time right for all the Holders collectively, which may be exercised once by any Requesting Group and then never thereafter by any Holder or Holders, whether or not a part of the Requesting Group), by written notice to the Company, signed by such Holders (the “Demand Notice”), to request the Company to register for resale all Registrable Securities included by the Requesting Group in the Demand Notice (the “Demand Shares”) under and in accordance with the provisions of the Securities Act by filing with the Commission a Registration Statement covering the resale of such Demand Shares (the “Demand Registration Statement”). A copy of the Demand Notice also shall be provided by the Company to each of the other Holders who will have fifteen (15) days to notify the Company in writing to include their Registrable Securities as part of the Demand Shares, the failure of which, however, shall not in any way affect the rights of the Requesting Group pursuant to this Section 2(a) or increase or change the rights of any Holder under this Section 2(a). The Demand Registration Statement required hereunder shall be on any form of registration statement then available for the registration of the Registrable Securities, as selected by the Company in accordance with applicable law and regulation. The Company will use its commercially reasonable efforts to file the Demand Registration Statement within forty-five (45) days of the receipt of the Demand Notice, provided if the Demand Notice is given within the forty-five (45) days after the prior fiscal year end, then the Company will use its reasonably commercial efforts to file the Demand Registration Statement within ninety (90) days of the fiscal year end of the Company. The Company shall use its commercially reasonable efforts to cause the Demand Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof and to keep the Demand Registration Statement continuously effective under the Securities Act until the earlier of (i) the date when all Registrable Securities have been sold pursuant to the Demand Registration Statement or an exemption from the registration requirements of the Securities Act; (ii) the date that the Holders can sell all of their Registrable Securities, pursuant to Rule 144; and (iii) one (1) year from the Effective Date of the Registration Statement. For the avoidance of doubt, the demand registration right of the Holders of Registrable Securities under this Agreement is distinct, separate and separable from the demand registration right in favor of the investor parties to the Investor Registration Agreement.

(b) Inclusion of Other Registrable Shares and Cutback Provisions. If as a result of Commission Comments, not all shares are included that are desired to be included in a Registration Statement for the Demand Shares, the provisions of Section 1(c) shall apply, subject to the Demand Priority (as defined below) of the Requesting Group. Pursuant to the piggyback registration rights granted under this Agreement or the Investor Registration Agreement, the Company may include the Registrable Shares of the other Holders which will be subject to the provision of Section 1(c) hereof, except that under Section 1(c)(iii), there will be no cutback of the Registrable Securities of the Requesting Group until the Holders of Piggyback Shares and the shares of any other person exercising piggyback rights under any other registration rights agreement (except for MDB Capital Group LLC, which shall have the priority established in Section 1(c)) have been removed, and thereafter if any further Registrable Securities have to be removed then those of the Requesting Group will be removed pro rata (the “Demand Priority”). Notwithstanding the foregoing, if any other securities of any person other than the Holders or the Requesting Group or MDB Capital Group LLC are included on the Demand Registration Statement, such securities will be removed, if required pursuant to Commission Comments, after removal of the securities indicated in Section 1(c)(i) and before the securities indicated in Section 1(c)(ii), as such persons decide among themselves, and if there is no agreement at to such removal provided to the Company within a reasonable time, time being of the essence, then all the such securities will be removed. In the event that any investor party to the Investor Registration Agreement asserts that a conflict between the Demand Priority and its rights under such Investor Registration Agreement, the Company agrees to use commercially reasonable efforts to resolve such conflict in a manner that upholds as much as is practicable of the Demand Priority specified herein, including without limitation, asserting such reasonable interpretation of such Investor Registration Agreement that would tend to support the Demand Priority specified herein.

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(c) Underwritten Demand Registration. If the Requesting Group intends to distribute the Registrable Securities covered by its request by means of an underwriting, it shall so advise the Company as a part of its request and the Requesting Group shall include such information in the Demand Notice. The underwriter will be selected by the Company and be reasonably acceptable to the Demand Group, provided that MDB Capital Group LLC shall be deemed acceptable. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by the Requesting Group and such Holder) to the extent provided herein. The Company and all Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Any Registrable Securities excluded from or withdrawn from any applicable underwriting shall be withdrawn from registration.

(d) Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a Registration Statement pursuant to this Section 2, a certificate signed by the chief executive officer of the Company stating that in the good faith judgment of the Company's board of directors, it would be seriously detrimental to the Company and its stockholders for such Registration Statement to be filed, the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Requesting Group; provided, however, that the Company may not utilize this right more than once in any twelve-month period, and provided, further, that the Company shall not register any securities for the account of itself or any other stockholder during such ninety (90)-day period ((other than on Form S-4 or Form S-8, each as promulgated under the Securities Act, or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit).

(e) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2 during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date ninety (90) days after the effective date of, a registration subject to Section 1 hereof, unless such offering is the Initial Public Offering of the Company's securities, in which case, ending on a date one hundred thirty-five (135) days after the Effective Date of such registration subject to Section 1 hereof; provided that the Company is actively employing in good faith all commercially reasonable efforts to cause such Registration Statement to become effective.

3. Registration Procedures. Whenever any Registrable Securities are to be registered pursuant to this Agreement, the Company shall use its commercially reasonable efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall have the following obligations:

(a) The Company shall prepare and file with the Commission a Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective.

(b) The Company shall prepare and file with the Commission such amendments (including post-effective amendments) and supplements to a Registration Statement and the Prospectus used in connection with such Registration Statement, which Prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Registration Statement effective at all times during the Effectiveness Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement by reason of the Company filing a report on Forms 10-K, 10-Q or Current Report on Form 8-K, or any analogous report under the Securities Exchange Act, the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the Commission on the same day on which the Securities Exchange Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

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(c) The Company shall furnish to each Holder of Registrable Securities in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the Commission at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by such seller, all exhibits and each preliminary Prospectus, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the Prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such seller may reasonably request), and (iii) such other documents, including copies of any preliminary or final Prospectus, as such seller may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such seller.

(d) The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by any seller of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Effectiveness Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Effectiveness Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

(e) The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest practicable time and to notify the Holder of any Registrable Securities included in the offering under such Registration Statement of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(f) The Company shall notify the Holder in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the Prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten (10) copies of such supplement or amendment to the Holder (or such other number of copies as the Holder may reasonably request).

(g) The Company shall promptly notify the Holder in writing (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to the Holder by facsimile on the same day of such effectiveness or by overnight delivery), (ii) of any request by the Commission for amendments or supplements to a Registration Statement or related Prospectus or related information, and (iii) of the Company’s reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

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(h) If the Holder is required under applicable securities laws to be described in a Registration Statement as an underwriter, at the reasonable request of such Holder, the Company shall use its best efforts to furnish to such Holder, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as the Holder may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Holder, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Holder.

(i) If the Holder is required under applicable securities laws to be described in a Registration Statement as an underwriter, then at the request of such Holder in connection with such Holder's due diligence requirements, the Company shall make available for inspection by (i) the Holder, (ii) the Holder's legal counsel, and (iii) one firm of accountants or other agents retained by the Holder (collectively, the "Inspectors"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to the Holder) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the Securities Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement of which the Inspector has knowledge. Each Holder agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and the Holder) shall be deemed to limit the Holder's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning the Holder provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement, or (v) the Holder provides information to the Company intended for inclusion in a Registration Statement. The Company agrees that it shall, upon learning that disclosure of such information concerning the Holder is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to the Holder if permitted by applicable law or regulation and allow the Holder, at the Holder's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

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(k) The Company shall (i) if applicable, use its best efforts to cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) otherwise, use its commercially reasonable efforts to secure designation and quotation of all of the Registrable Securities covered by a Registration Statement on any one of the different levels of The NASDAQ Stock Market, or (iii) if, despite the Company's best efforts or commercially reasonable efforts, as applicable, to satisfy, the preceding clauses (i) and (ii) the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to instead secure the inclusion for quotation on the Over-the-Counter Bulletin Board for such Registrable Securities and, without limiting the generality of the foregoing, to use its commercially reasonable efforts to encourage at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities. For the avoidance of doubt, subject to and in accordance with Section 5, the Company shall pay all fees and expenses of the Company in connection with satisfying its obligation under this Section 3(k).

(l) If requested by the Holder, the Company shall (i) as soon as practicable incorporate in a Prospectus supplement or post-effective amendment such information as the Holder reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) as soon as practicable make all required filings of such Prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment; and (iii) as soon as practicable, supplement or make amendments to any Registration Statement if reasonably requested by the Holder holding any Registrable Securities.

(m) The Company shall cooperate with each Holder who holds Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Holder may reasonably request and registered in such names as the Holder may request.

(n) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities, but only in matters not contemplated Section 3(d) by or reasonably related to such matters (which matters are to be governed exclusively by Section 3(d)), as may be strictly necessary to consummate the disposition of such Registrable Securities by the Holder strictly in accordance with the Plan of Distribution included in the Registration Statement (as such Plan of Distribution may be modified from time to time in any filing with the Commission).

(o) The Company shall make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby (or, if different, within the period permitted for the filing of reports on Forms 10-K or 10-Q), an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the Effective Date of a Registration Statement.

(p) The Company shall otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission in connection with any registration hereunder.

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(q) Within two (2) business days after a Registration Statement which covers Registrable Securities is ordered effective by the Commission, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Holder whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the Commission in the form attached hereto as Exhibit A and the Irrevocable Transfer Agent Instructions in the form attached hereto as Exhibit B.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date of a Registration Statement, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company, in the best interest of the Company and not, after consultation with legal counsel, otherwise required (a “Grace Period”); provided, that the Company shall promptly (i) notify the Holder in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Holder) and the date on which the Grace Period will begin, and (ii) notify the Holder in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed sixty (60) consecutive days and during any three hundred sixty-five (365) day period such Grace Periods shall not exceed an aggregate of one hundred twenty (120) days (each, an “Allowable Grace Period”). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Holder receives the notice referred to in clause (i) and shall end on and include the later of the date the Holder receives the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(e) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Holder in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale, and delivered a copy of the Prospectus included as part of the applicable Registration Statement (unless an exemption from such Prospectus delivery requirements exists), prior to the Holder’s receipt of the notice of a Grace Period or, if earlier, Holders knowledge of the material, non-public information concerning the Company that gave rise to the Grace Period, and for which the Holder has not yet settled.

(s) In the event the number of shares available under any Registration Statement filed pursuant to this agreement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement in accordance with the requirements of this Agreement or a Holder’s allocated portion of the Registrable Securities pursuant to Sections 1(c) or 2(b), the Company may, as an alternative, to filing a Follow-up Registration Statement, amend Registration Statement (if permissible) on or before the date the filing of a Follow-up Registration Statement would be required, so as to cover at least the required number of Registrable Securities (but taking account of any SEC Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its commercially reasonable efforts to cause such any such amendment to such Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC.

#### 4. Obligations of the Holders.

(a) At least five (5) business days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Holders in writing of the information the Company requires from each Holder if the Holder’s Registrable Securities are to be included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to any Registrable Securities of the Holder that the Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

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(b) The Holder, by the Holder's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless the Holder has notified the Company in writing of the Holder's election to exclude all of the Holder's Registrable Securities from such Registration Statement.

(c) The Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3(e) or 3(f) or of a Grace Period under Section 3(q), the Holder will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until the Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Sections 3(e) or 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Holder in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale prior to the Holder's receipt of a notice from the Company of the happening of any event of the kind described in Sections 3(e) or 3(f) or of any Grace Period, or, if earlier, Holder's knowledge of the material, non-public information concerning the Company or the facts or circumstances that gave rise to the Grace Period or of the Section 3(e) or 3(f) event, and for which the Holder has not yet settled.

(d) The Holder covenants and agrees that it will comply with the Prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to a Registration Statement.

5. Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement, including without limitation all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters (excluding discounts, commissions and placement agent fees) and other Persons retained by the Company (all such expenses being herein called "Registration Expenses"), shall be borne by the Company. Further, the Company shall pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed.

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## 6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Holder, the directors, officers, members, partners, employees, agents, representatives of, and each Person, if any, who controls the Holder within the meaning of the Securities Act or the Securities Exchange Act (each, an “Indemnified Person”), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys’ fees, amounts paid in settlement or expenses, joint or several, (collectively, “Claims”) incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the Commission, whether pending or threatened, whether or not an indemnified party is or may be a party thereto (“Indemnified Damages”), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “blue sky” laws of any jurisdiction in which Registrable Securities are offered (“Blue Sky Filing”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary Prospectus if used prior to the effective date of such Registration Statement, or contained in the final Prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the Commission) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the Securities Act or the Securities Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, “Violations”). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person or by a Related Information Provider expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto and (ii) shall not be available to the extent such Claim is based on a failure of the Holder to deliver or to cause to be delivered the Prospectus made available by the Company, including a corrected Prospectus, if such Prospectus or corrected Prospectus was timely made available by the Company pursuant to Section 3(c); and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Holder pursuant to Section 10. “Related Information Provider” means, in respect of any Indemnified Person, the Holder to which such Indemnified Person is related or another Indemnified Person that is related to the Holder to which such Indemnified Person is related.

(b) To the fullest extent permitted by law, in connection with any Registration Statement in which a Holder’s Registrable Securities are included or in which a Holder is otherwise participating, such Holder will severally and not jointly indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the Registration Statement, each Person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder or other Person selling securities in such Registration Statement and any controlling person of any such underwriter or other Holder or other Person (each an “Other Indemnified Person”), against any Claims or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder or by a Related Information Provider expressly for use in connection with such Registration Statement; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any Other Indemnified Person intended to be indemnified pursuant to this Section 6(b), in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) shall not apply to amounts paid in settlement of any such Claim if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld; provided, further, however, that the Holder shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Holder as a result of the sale of Registrable Securities pursuant to such Registration Statement, except in the case of fraud by such Holder. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Other Indemnified Person and shall survive the transfer of the Registrable Securities by the Holder pursuant to Section 10.

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(c) Promptly after receipt by an Indemnified Person or Other Indemnified Person under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Other Indemnified Person shall, if a claim for indemnification in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly notified, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and reasonably satisfactory to the Indemnified Person or the Other Indemnified Person (provided that the counsel that advised the Company in connection with the Registration Statement shall be deemed satisfactory to any Indemnified Person and the counsel that advised the Holder with respect to information provided by Holder or any Related Information Provider giving rise to a Violation shall be deemed satisfactory to any Other Indemnified Person if the Company was informed of the identity of such counsel in connection with the receipt of such information and did not request that Holder seek additional counsel in connection with such information), as the case may be; provided, however, that an Indemnified Person or Other Indemnified Person shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Persons or all such Other Indemnified Persons to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Other Indemnified Person and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Other Indemnified Person and any other party represented by such counsel in such proceeding. The Other Indemnified Person or Indemnified Person, as applicable, shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to such Other Indemnified Person or such Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Other Indemnified Person or Indemnified Person, as applicable, reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Other Indemnified Person or Indemnified Person, as applicable, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Other Indemnified Person or such Indemnified Person of a release from all liability in respect to the Claim at issue, and such settlement shall not include any admission as to fault on the part of such Other Indemnified Person or such Indemnified Person. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Other Indemnified Person or Indemnified Person, as applicable, with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Other Indemnified Person, as applicable, under this Section 6, except to the extent that the indemnifying party is materially prejudiced in its ability to defend such action.

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(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred, subject to an undertaking by the Indemnified Person or the Other Indemnified Person, as applicable, to return such payments to the extent a court of competent jurisdiction or other competent authority determines that such payments were unlawful or were not required under this Agreement.

(e) Without any duplication or multiplication of damages, the indemnity agreements contained herein shall be in addition (i) any cause of action or similar right of the Other Indemnified Person or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(f) Unless suspended by the underwriting agreement applicable to any registration, the obligations of the Company and Holders under this Section 6 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement, or otherwise.

7. Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, such indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement

8. No Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

9. Reports under Securities Exchange Act. With a view to making available to the Holder the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the Commission that may at any time permit the Holder to sell securities of the Company to the public without registration, once the Company becomes a Reporting Company, to use its commercially reasonable efforts to continue to be a Reporting Company for five years and further during such time it is a Reporting Company the Company agrees to use its best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Securities Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to the Holder so long as the Holder owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the Securities Act and the Securities Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Holder to sell such securities pursuant to Rule 144 without registration.

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10. Assignment of Registration Rights. The rights under this Agreement shall be automatically assignable by the Holder to any transferee of all or any portion of the Holder's Registrable Securities if: (i) the Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is or might be restricted under the Securities Act and applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

11. Subsequent Registration Rights. The Company agrees that after the date hereof and excluding the Investor Registration Agreement, it will not grant to any person any registration right or proceed to register any securities of any person unless it provides in such agreement or registration that any securities being registered under such agreement or registration will be subject to the cutback provisions of this Agreement as provided in Section 1(c) and Section 2(b).

12. Amendment of Registration Rights. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least a majority of the then outstanding Registrable Securities. Any amendment so effected will be binding upon all Holders, whether or not such Holder consents thereto.

13. Definitions.

(a) "Commission" means the Securities and Exchange Commission.

(b) "Commission Comments" means written comments pertaining solely to Rule 415 or other comments to the extent they relate to Rule 415 which are received by the Company from the Commission, and a copy of which shall have been provided by the Company to the Holder, to a filed Registration Statement which limit the amount of shares which may be included therein to a number of shares which is less than such amount sought to be included thereon as filed with the Commission.

(c) "Commission Guidance" means (i) any publicly-available written or oral guidance, comments, requirements or requests of the Commission staff, (ii) the Securities Act or (iii) the Securities Exchange Act.

(d) "Common Stock" means the common stock, \$0.00001 par value per share, of the Company.

(e) "Effective Date" means, as to a Registration Statement, the date on which such Registration Statement is first declared effective by the Commission.

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(f) “Person” means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

(g) “Prospectus” means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

(h) “Registrable Securities” (i) has the meaning established in the recitals and (ii) also includes any other shares of Common Stock or any other securities issued or issuable with respect to the securities referred to in clause (i) by way of a stock dividend or stock split or in connection with an exchange or combination of shares, recapitalization, merger, consolidation or other reorganization.

(i) “Registration Statement” means any registration statement (including, without limitation, the Initial Piggyback Registration Statement or the Follow-up Registration Statement) required to be filed hereunder (which, at the Company’s option, may be an existing registration statement of the Company previously filed with the Commission, but not declared effective), including (in each case) the Prospectus, amendments and supplements to the Registration Statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in the Registration Statement.

(j) “Reporting Company” means a company that is obligated to file periodic reports under Sections 13 or 15(d) of the Securities Exchange Act.

(k) “Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission that may at any time permit the Holder to sell securities of the Company to the public without registration.

(l) “Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(m) “Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(n) “Securities Act” means the Securities Act of 1933, as amended from time to time together with the regulations promulgated thereunder.

(o) “Securities Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, together with the regulations promulgated thereunder.

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(p) “Underwriter Cutbacks” means any reduction in the number of shares suggested by any managing underwriter to be included in a registration under a Registration Statement based upon the guidance in this Section 13(p). In connection with any offering involving an underwriting of shares of the Company’s capital stock, the Company shall not be required under Section 1 to include any of the Holders’ securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities to be sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling shareholders according to the total amount of securities entitled to be included therein owned by each selling shareholder or in such other proportions as shall mutually be agreed to by such selling shareholders); provided, that any such cutback will be effected in accordance with the priorities established by Section 1(c); provided further that in no event shall the amount of securities of the selling Holders included in the offering be reduced below 30% of the total amount of securities included in such offering.

14. Market Stand-Off. In connection with the Initial Public Offering of the Company’s securities, if any, and upon request of the managing or lead underwriter made to the Company in connection with such offering, each Holder will agree with the Company and the underwriter not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration, if any) without the prior written consent of the managing or lead underwriter of such offering, for a period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting requirements binding on such Holder that are substantially consistent with this Section 4 as may be requested by the underwriters at the time of the such offering; provided, however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16) day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 4 shall continue to apply until the end of the third (3rd) trading day following the expiration of the fifteen (15) day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond two hundred sixteen (216) days after the effective date of the registration statement. In order to enforce the restriction set forth above or any other restriction agreed by Holder, including without limitation any restriction requested by the underwriters of any Initial Public Offering of the securities of the Company agreed by such Holder, the Company may impose stop-transfer instructions with respect to any security acquired under or subject to this Agreement until the end of the applicable stand-off period. The Company’s underwriters shall be beneficiaries of the agreement set forth in this Section 14. Each Holder agrees that prior to the Company’s Initial Public Offering it will not transfer securities of the Company unless each transferee agrees in writing to be bound by all of the provisions of this Section 14, provided that this Section 14 shall not apply to transfers pursuant to a Registration Statement.

Each Holder agrees that a legend reading substantially as follows shall be placed on all certificates representing all Registrable Securities of each Holder issued before the Company’s Initial Public Offering (and the shares or securities of every other person subject to the restriction contained in this Section 14):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS AFTER THE EFFECTIVE DATE OF THE ISSUER’S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER’S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

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After the Company's Initial Public Offering, upon request of any Holder who is a holder of record of the shares represented by any stock certificate(s) bearing such legend and the surrender of such certificate(s) in connection with such request, the Company shall cause its transfer agent to promptly issue replacement certificate(s) not bearing such legend representing the shares represented by such surrendered stock certificate(s).

15. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one business day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

DvineWave Inc.  
207 Veritas Ct.  
San Ramon, CA 94582  
E-mail: mleabman@dvinewave.com  
Attention: Michael Leabman, President

With a copy (for informational purposes only) to:

Much Shelist, P.C.  
191 N. Wacker Drive, Suite 1800  
Chicago, IL 60606  
Fax Number 312.521.2898  
E-mail: ggrove@muchshelist.com  
Attention: Gregory D. Grove, Esq.

and

If to any Holder, at the address for such Holder on the records of the Company, which may include the information on Schedule A hereto.

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or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) This Agreement and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(f) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(g) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission or other electronic transmission (such as but not limited to an email attachment in PDF format) of a copy of this Agreement bearing the signature of the party so delivering this Agreement. This Agreement may also be executed by electronic signature of such Person.

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(i) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. As a condition precedent to participating in any underwritten offering each Holder that desires to participate in such offering shall sign any underwriting agreement related to such offering and all other documents requested by the managing underwriter that all other selling Holders are required to sign and all other documents customarily required by underwriters that all other security holders of the Company are requested to sign by the managing underwriter if the failure by all or any substantial portion of such security holders to sign would jeopardize the success of the underwritten offering.

(j) All consents and other determinations required to be made by the Holder pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Holder.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(l) This Agreement is intended for the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(m) The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder, and no provision of this Agreement is intended to confer any obligations on a Holder vis-à-vis any other Holder. Nothing contained herein, and no action taken by any Holder pursuant hereto, shall be deemed to constitute the Holder as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

(n) Currency. As used herein, "Dollar", "US Dollar" and "\$" each mean the lawful money of the United States.

[Signature pages follow immediately]

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**COMPANY:**

**DVINEWAVE INC.**

By: /s/ Michael Leabman  
Michael Leabman, President

**MDB CAPITAL GROUP LLC**

By: /s/ Gary Shuman

Print Name: Gary Shuman

Print Title: CFO and CCO

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**EXHIBIT A**

**FORM OF NOTICE OF EFFECTIVENESS  
OF REGISTRATION STATEMENT**

[Transfer Agent]

[Address]

Attention:

Re: \_\_\_\_\_ (the "Company")

Ladies and Gentlemen:

[We are][I am] counsel to \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Company"), and have represented the Company in connection with that certain Registration Rights Agreement with \_\_\_\_\_ (the "Holder") (the "Registration Rights Agreement") pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement), under the Securities Act of 1933, as amended (the "1933 Act"). In connection with the Company's obligations under the Registration Rights Agreement, on \_\_\_\_\_, 20\_\_, the Company filed a registration statement on Form S-1 (File No. 333-\_\_\_\_\_) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the Registrable Securities which names the Holder as a selling stockholder thereunder.

In connection with the foregoing, [we][I] advise you that a member of the SEC's staff has advised [us][me] by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and [we][I] have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

If applicable, you may receive notices from the Company pursuant to the Company's rights or obligations under the Registration Rights Agreement in connection with stop orders or other restrictions on transfer of the shares included in such Registration Statement, but [we][I] [are][am] not obligated to update this letter or otherwise inform you of any such stop order or restriction.

[Other applicable disclosure to be inserted here, if appropriate.]

Very truly yours,

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**EXHIBIT B**

**IRREVOCABLE TRANSFER AGENT INSTRUCTIONS**

\_\_\_\_\_, 2013

[Addressed to Transfer Agent]

Attention: [\_\_\_\_\_]

Ladies and Gentlemen:

Reference is made to that certain Registration Rights Agreement, dated as of \_\_\_\_\_, 2013 (the "**Agreement**"), by and among \_\_\_\_\_, a \_\_\_\_\_ corporation (the "**Company**"), and \_\_\_\_\_ (the "**Holder**"), pursuant to which the Company is obligated to register certain shares held by the Holder (the "**Holder Shares**") of Common Stock of the Company, par value \$\_\_\_\_\_ per share (the "**Common Stock**").

This letter shall serve as our irrevocable authorization and direction to you (provided that you are the transfer agent of the Company at such time) to issue shares of Common Stock upon transfer or resale of the Holder Shares, unless we have otherwise informed you of the termination of effectiveness of the registration statement in which the Holder Shares are included, a stop order or another transfer restriction. We may also later inform you that after the termination of effectiveness of such registration statement that a registration statement in which the Holder's Shares are included, or that such stop order has been lifted or that such transfer restriction is not applicable, in which case this authorization and direction shall be reinstated and be effective.

You acknowledge and agree that so long as you have previously received (a) written confirmation from the Company's legal counsel that either (i) a registration statement covering resales of the Holder Shares has been declared and remains effective by the Securities and Exchange Commission (the "**SEC**") under the Securities Act of 1933, as amended (the "**1933 Act**"), or (ii) sales of the Holder Shares may be made in conformity with Rule 144 under the 1933 Act ("**Rule 144**"), (b) if applicable, a copy of such registration statement, and (c) notice from legal counsel to the Company or any Holder that a transfer of Holder Shares has been effected either pursuant to the registration statement (and a prospectus delivered to the transferee) or pursuant to Rule 144, then as promptly as practicable, you shall issue the certificates representing the Holder Shares registered in the names of such transferees, and such certificates shall not bear any legend restricting transfer of the Common Stock evidenced thereby and should not be subject to any stop-transfer restriction; provided, however, that if such shares of Common Stock and are not registered for resale under the 1933 Act or able to be sold under Rule 144, then the certificates for such Common Shares shall bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

A form of written confirmation from the Company's outside legal counsel that a registration statement covering resales of the Holder Shares has been declared effective by the SEC under the 1933 Act is attached hereto. We will inform you of any stop orders or other transfer restrictions.

Please execute this letter in the space indicated to acknowledge your agreement to act in accordance with these instructions. Should you have any questions concerning this matter, please contact me at \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_(the "Company")

By: \_\_\_\_\_

Name:

Title:

THE FOREGOING INSTRUCTIONS ARE  
ACKNOWLEDGED AND AGREED TO

this \_\_\_ day of \_\_\_\_\_, 2013

**[TRANSFER AGENT]**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Enclosures

Copy: Holder

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**SCHEDULE A**

**LIST OF HOLDERS**

[INSTRUCTION: List the name and address of each holder.]

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## SCHEDULE B

### SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are those issuable to the selling stockholders upon [conversion of the notes and exercise of the warrants]. For additional information regarding the issuance of the [notes and the warrants], see “Private Placement of Notes” above. We are registering the shares of common stock in order to permit the selling stockholders to offer the shares for resale [from time to time]. Except for the ownership of [the notes issued pursuant to and in connection with the Securities Purchase Agreement, and the warrants issued pursuant to and the agreements governing our engagement of MDB Capital Group LLC as a placement agent for the private placement of the notes and the engagement of MDB Capital Group LLC as an underwriter for a public offering of common stock by the Company, and our engagement of an affiliate of MDB Capital Group LLC as a consultant in respect of our patents and intellectual property] the selling stockholders have not had any material relationship with us within the past three years. ***[Adjust as necessary, according to the facts.]***

The table below lists the selling stockholders and other information regarding the beneficial ownership (as determined under Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) of the shares of common stock held by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by the selling stockholders, based on their respective ownership of shares of common stock[, notes and warrants,] as of \_\_\_\_\_, 20\_\_, [assuming conversion of the notes and exercise of the warrants held by each such selling stockholder on that date but taking account of any limitations on conversion and exercise set forth therein]. ***[Adjust as necessary, according to the facts.]***

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders [and does not take into account any limitations on (i) conversion of the notes set forth therein or (ii) exercise of the warrants set forth therein]. ***[Adjust as necessary, according to the facts.]***

In accordance with the terms of a registration rights agreement with the holders of the notes and the warrants, this prospectus generally covers the resale of [(i) the shares of common stock issued upon conversion of the notes and (ii) the maximum number of shares of common stock issuable upon exercise of the warrants, in each case, determined as if the outstanding notes and warrants were converted or exercised (as the case may be) in full (without regard to any limitations on conversion or exercise contained therein) as of the trading day immediately preceding the date this registration statement was initially filed with the SEC]. Because the conversion price of the notes and the exercise price of the warrants may be adjusted, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus. ***[Adjust as necessary, according to the facts.]***

See “Plan of Distribution.”

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<u>Name of Selling Stockholder</u>	<u>Number of Shares of Common Stock Owned Prior to the Offering</u>	<u>Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus</u>	<u>Number of Shares of Common Stock Owned After the Offering</u>
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[Notes (1) . . .] *[Adjust as necessary, according to the facts.]*

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## PLAN OF DISTRIBUTION

*[Adjust as necessary, according to the facts and any underwriting arrangements.]*

We are registering the shares of common stock issued upon [conversion of the notes and issuable on exercise of the warrants] to permit the resale of these shares of common stock by the holders of [the notes and warrants] [from time to time] after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may sell all or a portion of the shares of common stock held by them and offered hereby [from time to time] [directly or] through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales made after the date the Registration Statement is declared effective by the SEC;
- broker-dealers may agree with a selling security holder to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling stockholders may transfer the shares of common stock by other means not described in this prospectus. If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholders may pledge or grant a security interest in some or all of the [notes, warrants or] shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and in each case together with the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any Person to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[ ] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

DVINEWAVE, INC.

2013 EQUITY INCENTIVE PLAN

DvineWave Inc., a Delaware corporation (the “Company”), sets forth herein the terms of its 2013 Equity Incentive Plan (the “Plan”), as follows:

**1. PURPOSE**

The Plan is intended to enhance the ability of the Company and its Affiliates (as defined herein) to attract and retain highly qualified officers, non-employee members of the Board, key employees, consultants and advisors, and to motivate such officers, non-employee members of the Board, key employees, consultants and advisors to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, other stock-based awards and cash awards. Any of these awards may, but need not, be made as performance incentives to reward attainment of performance goals in accordance with the terms hereof. Stock options granted under the Plan may be non-qualified stock options or incentive stock options, as provided herein.

**2. DEFINITIONS**

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

**2.1. “Acquiror”** shall have the meaning set forth in **Section 15.2.1**.

**2.2. “Affiliate”** means any company or other trade or business that “controls,” is “controlled by” or is “under common control” with the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including, without limitation, any Subsidiary.

**2.3. “Award”** means a grant of an Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Other Stock-based Award or cash award under the Plan.

**2.4. “Award Agreement”** means a written agreement between the Company and a Grantee, or notice from the Company or an Affiliate to a Grantee that evidences and sets out the terms and conditions of an Award.

**2.5. “Board”** means the Board of Directors of the Company.

**2.6. “Business Combination”** shall have the meaning set forth in **Section 15.2.2**.

**2.7. “Cause”** shall be defined as that term is defined in the Grantee’s offer letter or other applicable employment agreement; or, if there is no such definition, “Cause” means, as determined by the Company and unless otherwise provided in an applicable Award Agreement: (i) the commission of any act by a Grantee constituting financial dishonesty against the Company or its Affiliates (which act would be chargeable as a crime under applicable law); (ii) a Grantee’s engaging in any other act of dishonesty, fraud, intentional misrepresentation, moral turpitude, illegality or harassment which, as determined in good faith by the Board, would: (A) materially adversely affect the business or the reputation of the Company or any of its Affiliates with their respective current or prospective customers, suppliers, lenders and/or other third parties with whom such entity does or might do business; or (B) expose the Company or any of its Affiliates to a risk of civil or criminal legal damages, liabilities or penalties; (iii) the repeated failure by a Grantee to follow the directives of the chief executive officer of the Company or any of its Affiliates or the Board, or (iv) any material misconduct, violation of the Company’s or Affiliates’ policies, or willful and deliberate non-performance of duty by the Grantee in connection with the business affairs of the Company or its Affiliates.

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2.8. **“Change in Control”** shall have the meaning set forth in **Section 15.2.2**.

2.9. **“Code”** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. References to the Code shall include the valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder.

2.10. **“Committee”** means the Compensation Committee of the Board, or such other committee as determined by the Board. The Compensation Committee of the Board may, in its discretion, designate a subcommittee of its members to serve as the Committee (to the extent the Board has not designated another person, committee or entity as the Committee). Following the Initial Public Offering, (i) the Board will cause the Committee to satisfy the applicable requirements of any stock exchange on which the Common Stock may then be listed; (ii) for purposes of Awards to Covered Employees intended to constitute Performance Awards, to the extent required by Code Section 162(m), Committee means all of the members of the Compensation Committee who are “outside directors” within the meaning of Section 162(m) of the Code; and (iii) for purposes of Awards to Grantees who are subject to Section 16 of the Exchange Act, Committee means all of the members of the Compensation Committee who are “non-employee directors” within the meaning of Rule 16b-3 adopted under the Exchange Act.

2.11. **“Company”** shall have the meaning set forth in the preamble.

2.12. **“Common Stock”** or **“Stock”** means a share of common stock of the Company, par value \$.0001 per share.

2.13. **“Consultant”** means a consultant or advisor that provides bona fide services to the Company or any Affiliate and who qualifies as a consultant or advisor under Rule 701 of the Securities Act (during any period in which the Company is not a public company subject to the reporting requirements of the Exchange Act) or Form S-8 (during any period in which the Company is a public company subject to the reporting requirements of the Exchange Act).

2.14. **“Covered Employee”** means a Grantee who is a “covered employee” within the meaning of Section 162(m)(3) of the Code as qualified by **Section 12.4**.

2.15. **“Disability”** shall be defined as that term is defined in the Grantee’s offer letter or other applicable employment agreement; or, if there is no such definition, “Disability” means, as determined by the Company and unless otherwise provided in an applicable Award Agreement, the Grantee is unable to perform each of the essential duties of such Grantee’s position by reason of a medically determinable physical or mental impairment which is potentially permanent in character or which can be expected to last for a continuous period of not less than 12 months; *provided, however*, that, with respect to rules regarding expiration of an Incentive Stock Option following termination of the Grantee’s Service, “Disability” means “permanent and total disability” as set forth in Section 22(e)(3) of the Code.

2.16. **“Effective Date”** means November [●], 2013, the date the Plan was approved by the Company’s stockholders.

2.17. **“Exchange Act”** means the Securities Exchange Act of 1934, as now in effect or as hereafter amended.

2.18. **“Fair Market Value”** of a share of Common Stock as of a particular date shall mean (1) if the Common Stock is listed on a national securities exchange, the closing or last price of the Common Stock on the composite tape or other comparable reporting system for the applicable date, or if the applicable date is not a trading day, the trading day immediately preceding the applicable date, or (2) if the shares of Common Stock are not then listed on a national securities exchange, or the value of such shares is not otherwise determinable, such value as determined by the Board in good faith in its sole discretion.

**2.19. “Family Member”** means a person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law, including adoptive relationships, of the applicable individual, any person sharing the applicable individual’s household (other than a tenant or employee), a trust in which any one or more of these persons have more than fifty percent of the beneficial interest, a foundation in which any one or more of these persons (or the applicable individual) control the management of assets, and any other entity in which one or more of these persons (or the applicable individual) own more than fifty percent of the voting interests.

**2.20. “Grant Date”** means, as determined by the Board, the latest to occur of (i) the date as of which the Board approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6**, or (iii) such other date as may be specified by the Board in the Award Agreement.

**2.21. “Grantee”** means a person who receives or holds an Award under the Plan.

**2.22. “Holder”** means, with respect to any Issued Shares, the person holding such Issued Shares, including the initial Grantee or any Permitted Transferee.

**2.23. “Incentive Stock Option”** means an “incentive stock option” within the meaning of Section 422 of the Code, or the corresponding provision of any subsequently enacted tax statute, as amended from time to time.

**2.24. “Incumbent Directors”** shall have the meaning set forth in **Section 15.2.2**.

**2.25. “Initial Public Offering”** means the initial public offering of shares of Common Stock pursuant to a registration statement (other than a Form S-8 or successor forms) filed with, and declared effective by, the SEC.

**2.26. “Issued Shares”** means, collectively, all outstanding shares of Stock issued pursuant to Awards (including without limitation, outstanding shares of Restricted Stock prior to or after vesting and shares issued in connection with the exercise of an Option or SAR).

**2.27. “New Shares”** shall have the meaning set forth in **Section 15.1**.

**2.28. “Non-qualified Stock Option”** means an Option that is not an Incentive Stock Option.

**2.29. “Offered Shares”** shall have the meaning set forth in **Section 17.4.1**.

**2.30. “Offering”** shall have the meaning set forth in **Section 17.5**.

**2.31. “Option”** means an option to purchase one or more shares of Stock pursuant to the Plan. An Option may be either an Incentive Stock Option or a Non-qualified Stock Option.

**2.32. “Option Price”** means the exercise price for each share of Stock subject to an Option.

**2.33. “Other Stock-based Awards”** means Awards consisting of Stock units, or other Awards, valued in whole or in part by reference to, or otherwise based on, Common Stock.

**2.34. “Performance Award”** means an Award made subject to the attainment of performance goals (as described in **Section 12**) over a performance period of at least one year.

2.35. **“Permitted Transferee”** means any of the following to whom a Holder may transfer Issued Shares hereunder (as set forth in **Section 17.13.3**): the Holder’s spouse, children (natural or adopted), stepchildren or a trust for their sole benefit of which the Holder is the settlor; *provided however*, that any such trust does not require or permit distribution of any Issued Shares during the term of this Agreement unless subject to its terms. Upon the death of the Holder, the term Permitted Transferees shall also include such deceased Holder’s estate, executors, administrators, personal representatives, heirs, legatees and distributees, as the case may be.

2.36. **“Plan”** shall have the meaning set forth in the preamble.

2.37. **“Prior Plan”** means the 2013 Stock Plan of DvineWave Inc.

2.38. **“Purchase Price”** means the purchase price for each share of Stock pursuant to a grant of Restricted Stock.

2.39. **“Restricted Period”** shall have the meaning set forth in **Section 10.1**.

2.40. **“Restricted Stock”** means shares of Stock, awarded to a Grantee pursuant to **Section 10**.

2.41. **“Restricted Stock Unit”** means a bookkeeping entry representing the equivalent of shares of Stock, awarded to a Grantee pursuant to **Section 10**.

2.42. **“SAR Exercise Price”** means the per share exercise price of a SAR granted to a Grantee under **Section 9**.

2.43. **“SEC”** means the United States Securities and Exchange Commission.

2.44. **“Section 409A”** means Section 409A of the Code.

2.45. **“Securities Act”** means the Securities Act of 1933, as now in effect or as hereafter amended.

2.46. **“Separation from Service”** means a termination of Service by a Service Provider, as determined by the Board, which determination shall be final, binding and conclusive; *provided, however*, that if any Award governed by Section 409A is to be distributed on a Separation from Service, then the definition of Separation from Service for such purposes shall comply with the definition provided in Section 409A.

2.47. **“Service”** means service as a Service Provider to the Company or an Affiliate. Unless otherwise stated in the applicable Award Agreement, a Grantee’s change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate.

2.48. **“Service Provider”** means an employee, officer, non-employee member of the Board, or Consultant of the Company or an Affiliate.

2.49. **“Stock Appreciation Right”** or **“SAR”** means a right granted to a Grantee under **Section 9**.

2.50. **“Subsidiary”** means any “subsidiary corporation” of the Company within the meaning of Section 424(f) of the Code.

2.51. **“Substitute Award”** means any Award granted in assumption of or in substitution for an award of a company or business acquired by the Company or a Subsidiary or with which the Company or an Affiliate combines.



2.52. **“Ten Percent Stockholder”** means an individual who owns more than ten percent (10%) of the total combined voting power of all classes of outstanding stock of the Company, its parent or any of its Subsidiaries. In determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

2.53. **“Termination Date”** means the date that is ten (10) years after the Effective Date, unless the Plan is earlier terminated by the Board under Section 5.2.

2.54. **“Transition Period”** means the period beginning with the consummation of an Initial Public Offering and ending as of the earlier of (i) the date of the first annual meeting of shareholders of the Company at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the Initial Public Offering occurs and (ii) the expiration of the “reliance period” under Treasury Regulation Section 1.162-27(f)(2).

2.55. **“Voting Securities”** shall have the meaning set forth in Section 15.2.2.

### 3. ADMINISTRATION OF THE PLAN

#### 3.1. General.

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company’s certificate of incorporation and bylaws and applicable law. The Board shall have the power and authority to delegate its responsibilities hereunder to the Committee, which shall have full authority to act in accordance with its charter (as in effect from time to time), and with respect to the authority of the Board to act hereunder, all references to the Board shall be deemed to include a reference to the Committee, to the extent such power or responsibilities have been delegated. Except as specifically provided in Section 14 or as otherwise may be required by applicable law, regulatory requirement or the certificate of incorporation or the bylaws of the Company, the Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan. Following the Initial Public Offering, the Committee shall administer the Plan; provided, however, the Board shall retain the right to exercise the authority of the Committee to the extent consistent with applicable law and the applicable requirements of any securities exchange on which the Common Stock may then be listed. The interpretation and construction by the Board of any provision of the Plan, any Award or any Award Agreement shall be final, binding and conclusive. Without limitation, the Board shall have full and final authority, subject to the other terms and conditions of the Plan, to:

- (i) designate Grantees;
- (ii) determine the type or types of Awards to be made to a Grantee;
- (iii) determine the number of shares of Stock to be subject to an Award;
- (iv) establish the terms and conditions of each Award (including, but not limited to, the Option Price of any Option, the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer, or forfeiture of an Award or the shares of Stock subject thereto, and any terms or conditions that may be necessary to qualify Options as Incentive Stock Options);
- (v) prescribe the form of each Award Agreement; and

(vi) amend, modify, or supplement the terms of any outstanding Award including the authority, in order to effectuate the purposes of the Plan, to modify Awards to foreign nationals or individuals who are employed outside the United States to recognize differences in local law, tax policy, or custom.

### **3.2. Award Agreements; Clawbacks.**

The grant of any Award may be contingent upon the Grantee executing the appropriate Award Agreement. The Company may retain the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee on account of actions taken by the Grantee in violation or breach of or in conflict with any employment agreement, non-competition agreement, any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate thereof or any confidentiality obligation with respect to the Company or any Affiliate thereof or otherwise in competition with the Company or any Affiliate thereof, to the extent specified in such Award Agreement applicable to the Grantee. Furthermore, the Company may annul an Award if the Grantee is terminated for “cause” as defined in the applicable Award Agreement.

Following the Initial Public Offering, Awards shall be subject to the requirements of (i) Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recovery of erroneously awarded compensation) and any implementing rules and regulations thereunder,, (ii) similar rules under the laws of any other jurisdiction, (iii) any compensation recovery policies adopted by the Company to implement any such requirements or (iv) any other compensation recovery policies as may be adopted from time to time by the Company, all to the extent determined by the Committee in its discretion to be applicable to a Grantee.

### **3.3. Deferral Arrangement.**

The Board may permit or require the deferral of any Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish and in accordance with Section 409A, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred Stock units.

### **3.4. No Liability.**

No member of the Board or of the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award or Award Agreement.

### **3.5. Book Entry.**

Notwithstanding any other provision of this Plan to the contrary, the Company may elect to satisfy any requirement under this Plan for the delivery of stock certificates through the use of book-entry.

## **4. STOCK SUBJECT TO THE PLAN**

### **4.1. Authorized Number of Shares.**

Subject to adjustment under **Section 15**, the aggregate number of shares of Common Stock that may be initially issued pursuant to the Plan is 4,158,245. The total number of shares of Common Stock described in the preceding sentence shall be available for issuance under Incentive Stock Options. From and after the Effective Date, no new awards will be made under the Prior Plan. Shares issued under the Plan may consist in whole or in part of authorized but unissued shares, treasury shares, or shares purchased on the open market or otherwise, all as determined by the Company from time to time. No later than the end of the Transition Period, the maximum number of shares for each type of Stock-based Award, and the maximum amount of cash for any cash-based Award, intended to constitute “performance-based compensation” under Code Section 162(m) granted to any Grantee in any specified period shall be established by the Company and approved by the Company’s stockholders.

#### **4.2. Share Counting.**

Any Award settled in cash shall not be counted as shares of Common Stock for any purpose under this Plan. If any Award under the Plan expires, or is terminated, surrendered or forfeited, in whole or in part, the unissued Common Stock covered by such Award shall again be available for the grant of Awards under the Plan. If shares of Common Stock issued pursuant to the Plan are repurchased by, or are surrendered or forfeited to the Company at no more than cost, such shares of Common Stock shall again be available for the grant of Awards under the Plan. If shares of Common Stock issuable upon exercise, vesting or settlement of an Award, or shares of Common Stock owned by a Grantee (which are not subject to any pledge or other security interest), are surrendered or tendered to the Company in payment of the Option Price or Purchase Price of an Award or any taxes required to be withheld in respect of an Award, in each case, in accordance with the terms and conditions of the Plan and any applicable Award Agreement, such surrendered or tendered shares of Common Stock shall again become available for issuance under the Plan. In addition, in the case of any Substitute Award, such Substitute Award shall not be counted against the number of shares reserved under the Plan.

### **5. EFFECTIVE DATE, DURATION AND AMENDMENTS**

#### **5.1. Term.**

The Plan shall be effective as of the Effective Date, provided that it has been approved by the Company's stockholders. The Plan shall terminate automatically on the ten (10) year anniversary of the Effective Date and may be terminated on any earlier date as provided in **Section 5.2**.

#### **5.2. Amendment and Termination of the Plan.**

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan as to any Awards which have not been made. An amendment shall be contingent on approval of the Company's stockholders to the extent stated by the Board, required by applicable law or required by applicable stock exchange listing requirements. No Awards shall be made after the Termination Date. The applicable terms of the Plan, and any terms and conditions applicable to Awards granted prior to the Termination Date shall survive the termination of the Plan and continue to apply to such Awards. No amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, materially impair rights or obligations under any Award theretofore awarded.

### **6. AWARD ELIGIBILITY AND LIMITATIONS**

#### **6.1. Service Providers.**

Subject to this Section 6, Awards may be made to any Service Provider as the Board shall determine and designate from time to time in its discretion.

#### **6.2. Successive Awards.**

An eligible person may receive more than one Award, subject to such restrictions as are provided herein.

### **6.3. Stand-Alone, Additional, Tandem, and Substitute Awards.**

Awards may, in the discretion of the Board, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Affiliate, or any business entity to be acquired by the Company or an Affiliate, or any other right of a Grantee to receive payment from the Company or any Affiliate. Such additional, tandem, and substitute or exchange Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award, the Board shall have the right to require the surrender of such other Award in consideration for the grant of the new Award. Subject to the requirements of applicable law, the Board shall have the right, in its discretion, to make Awards in substitution or exchange for any other award under another plan of the Company, any Affiliate, or any business entity to be acquired by the Company or an Affiliate. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Affiliate, in which the value of Stock subject to the Award is equivalent in value to the cash compensation (for example, Restricted Stock Units or Restricted Stock).

## **7. AWARD AGREEMENT**

Each Award shall be evidenced by an Award Agreement, in such form or forms as the Board shall from time to time determine. Without limiting the foregoing, an Award Agreement may be provided in the form of a notice which provides that acceptance of the Award constitutes acceptance of all terms of the Plan and the notice. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan. Each Award Agreement evidencing an Award of Options shall specify whether such Options are intended to be Non-qualified Stock Options or Incentive Stock Options, and in the absence of such specification such options shall be deemed Non-qualified Stock Options.

## **8. TERMS AND CONDITIONS OF OPTIONS**

### **8.1. Option Price.**

The Option Price of each Option shall be fixed by the Board and stated in the related Award Agreement. The Option Price of each Option intended to be an Incentive Stock Option (except those that constitute Substitute Awards) shall be at least the Fair Market Value on the Grant Date of a share of Stock; *provided, however*, that in the event that a Grantee is a Ten Percent Stockholder as of the Grant Date, the Option Price of an Option granted to such Grantee that is intended to be an Incentive Stock Option shall be not less than 110 percent of the Fair Market Value of a share of Stock on the Grant Date. In no case shall the Option Price of any Option be less than the par value of a share of Stock.

### **8.2. Vesting.**

Subject to **Section 8.3**, each Option shall become exercisable at such times and under such conditions (including, without limitation, performance requirements) as shall be determined by the Board and stated in the Award Agreement.

### **8.3. Term.**

Each Option shall terminate, and all rights to purchase shares of Stock thereunder shall cease, upon the expiration of the Option term determined by the Board and stated in the Award Agreement not to exceed ten (10) years from the Grant Date, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Board and stated in the related Award Agreement; *provided, however*, that in the event that the Grantee is a Ten Percent Stockholder, an Option granted to such Grantee that is intended to be an Incentive Stock Option at the Grant Date shall not be exercisable after the expiration of five (5) years from its Grant Date.

### **8.4. Limitations on Exercise of Option.**

Notwithstanding any other provision of the Plan, in no event may any Option be exercised, in whole or in part, (i) prior to the date the Plan is approved by the stockholders of the Company as provided herein or (ii) after the occurrence of an event which results in termination of the Option.

### **8.5. Method of Exercise.**

An Option that is exercisable may be exercised by the Grantee's delivery of a notice of exercise to the Company, setting forth the number of shares of Stock with respect to which the Option is to be exercised, accompanied by full payment for the shares. To be effective, notice of exercise must be made in accordance with procedures established by the Company from time to time.

### **8.6. Rights of Holders of Options.**

Unless otherwise stated in the related Award Agreement, an individual holding or exercising an Option shall have none of the rights of a stockholder (for example, the right to receive cash or dividend payments or distributions attributable to the subject shares of Stock or to direct the voting of the subject shares of Stock ) until the shares of Stock covered thereby are fully paid and issued to him. Except as provided in **Section 15** or the related Award Agreement, no adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date of such issuance.

### **8.7. Delivery of Stock Certificates.**

Promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price, such Grantee shall be entitled to the issuance of a stock certificate or certificates evidencing his or her ownership of the shares of Stock subject to the Option.

### **8.8. Limitations on Incentive Stock Options.**

An Option shall constitute an Incentive Stock Option only (i) if the Grantee of such Option is an employee of the Company or any Subsidiary of the Company; (ii) to the extent specifically provided in the related Award Agreement; and (iii) to the extent that the aggregate Fair Market Value (determined at the time the Option is granted) of the shares of Stock with respect to which all Incentive Stock Options held by such Grantee become exercisable for the first time during any calendar year (under the Plan and all other plans of the Grantee's employer and its Affiliates) does not exceed \$100,000. This limitation shall be applied by taking Options into account in the order in which they were granted.

## **9. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS**

### **9.1. Right to Payment.**

A SAR shall confer on the Grantee a right to receive, upon exercise thereof, the excess of (i) the Fair Market Value of one share of Stock on the date of exercise over (ii) the SAR Exercise Price, as determined by the Board. The Award Agreement for an SAR shall specify the SAR Exercise Price. SARs may be granted alone or in conjunction with all or part of an Option or at any subsequent time during the term of such Option or in conjunction with all or part of any other Award.

### **9.2. Other Terms.**

The Board shall determine at the Grant Date or thereafter, the time or times at which and the circumstances under which a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which SARs shall cease to be or become exercisable following Separation from Service or upon other conditions, the method of exercise, whether or not a SAR shall be in tandem or in combination with any other Award, and any other terms and conditions of any SAR.

### **9.3. Term of SARs.**

The term of a SAR granted under the Plan shall be determined by the Board, in its sole discretion; *provided, however*, that such term shall not exceed ten (10) years.

#### **9.4. Payment of SAR Amount.**

Upon exercise of a SAR, a Grantee shall be entitled to receive payment from the Company (in cash or Stock, as determined by the Board) in an amount determined by multiplying:

- (i) the difference between the Fair Market Value of a share of Stock on the date of exercise over the SAR Exercise Price; by
- (ii) the number of shares of Stock with respect to which the SAR is exercised.

### **10. TERMS AND CONDITIONS OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS**

#### **10.1. Restrictions.**

At the time of grant, the Board may, in its sole discretion, establish a period of time (a “**Restricted Period**”) and any additional restrictions including the satisfaction of corporate or individual performance objectives applicable to an Award of Restricted Stock or Restricted Stock Units in accordance with **Section 12.1** and **12.2**. Each Award of Restricted Stock or Restricted Stock Units may be subject to a different Restricted Period and additional restrictions. Neither Restricted Stock nor Restricted Stock Units may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the Restricted Period or prior to the satisfaction of any other applicable restrictions.

#### **10.2. Restricted Stock Certificates.**

The Company shall issue stock, in the name of each Grantee to whom Restricted Stock has been granted, stock certificates or other evidence of ownership representing the total number of shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date. The Board may provide in an Award Agreement that either (i) the Secretary of the Company shall hold such certificates for the Grantee’s benefit until such time as the Restricted Stock is forfeited to the Company or the restrictions lapse, or (ii) such certificates shall be delivered to the Grantee; *provided, however*, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and make appropriate reference to the restrictions imposed under the Plan and the Award Agreement.

#### **10.3. Rights of Holders of Restricted Stock.**

Unless the Board otherwise provides in an Award Agreement, holders of Restricted Stock shall have rights as stockholders of the Company, including voting and dividend rights.

#### **10.4. Rights of Holders of Restricted Stock Units.**

##### **10.4.1. Settlement of Restricted Stock Units.**

Restricted Stock Units may be settled in cash or Stock, as determined by the Board and set forth in the Award Agreement. The Award Agreement shall also set forth whether the Restricted Stock Units shall be settled (i) within the time period specified in **Section 17.11** for short term deferrals or (ii) otherwise within the requirements of Section 409A, in which case the Award Agreement shall specify upon which events such Restricted Stock Units shall be settled.

##### **10.4.2. Voting and Dividend Rights.**

Unless otherwise stated in the applicable Award Agreement, holders of Restricted Stock Units shall not have rights as stockholders of the Company, including no voting or dividend or dividend equivalents rights.

#### **10.4.3. Creditor's Rights.**

A holder of Restricted Stock Units shall have no rights other than those of a general creditor of the Company. Restricted Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

#### **10.5. Purchase of Restricted Stock.**

The Grantee shall be required, to the extent required by applicable law, to purchase the Restricted Stock from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the shares of Stock represented by such Restricted Stock or (ii) the Purchase Price, if any, specified in the related Award Agreement. If specified in the Award Agreement, the Purchase Price may be deemed paid by Services already rendered. The Purchase Price shall be payable in a form described in **Section 11** or, in the discretion of the Board, in consideration for past Services rendered.

#### **10.6. Delivery of Stock.**

Upon the expiration or termination of any Restricted Period and the satisfaction of any other conditions prescribed by the Board, the restrictions applicable to shares of Restricted Stock or Restricted Stock Units settled in Stock shall lapse, and, unless otherwise provided in the Award Agreement, a stock certificate for such shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be.

### **11. FORM OF PAYMENT FOR OPTIONS AND RESTRICTED STOCK**

#### **11.1. General Rule.**

Payment of the Option Price for the shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company, except as provided in this **Section 11**.

#### **11.2. Surrender of Stock.**

To the extent the Award Agreement so provides, payment of the Option Price for shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock may be made all or in part through the tender to the Company of shares of Stock, which shares shall be valued, for purposes of determining the extent to which the Option Price or Purchase Price for Restricted Stock has been paid thereby, at their Fair Market Value on the date of exercise or surrender. Notwithstanding the foregoing, in the case of an Incentive Stock Option, the right to make payment in the form of already owned shares of Stock may be authorized only at the time of grant.

#### **11.3. Cashless Exercise.**

With respect to an Option only (and not with respect to Restricted Stock) following the Initial Public Offering, to the extent permitted by law and to the extent the Award Agreement so provides, payment of the Option Price may be made all or in part by delivery (on a form acceptable to the Company) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell shares of Stock and to deliver all or part of the sales proceeds to the Company in payment of the Option Price and any withholding taxes described in **Section 17.3**.

#### **11.4. Other Forms of Payment.**

To the extent the Award Agreement so provides, payment of the Option Price or the Purchase Price for Restricted Stock may be made in any other form that is consistent with applicable laws, regulations and rules, including, but not limited to, the Company's withholding of shares of Stock otherwise due to the exercising Grantee.

### **12. TERMS AND CONDITIONS OF PERFORMANCE AWARDS**

#### **12.1. Performance Conditions.**

The right of a Grantee to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Board. The Board may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions, and may exercise its discretion to reduce the amounts payable under any Award subject to performance conditions, except as limited under **Section 12.2** in the case of a Performance Award intended to qualify under Code Section 162(m).

#### **12.2. Performance Awards Granted to Designated Covered Employees.**

If and to the extent that the Board determines that a Performance Award to be granted to a Grantee who is designated by the Board as likely to be a Covered Employee should qualify as "performance-based compensation" for purposes of Code Section 162(m), the grant, exercise and/or settlement of such Performance Award shall be contingent upon achievement of pre-established performance goals and other terms set forth in this **Section 12.2**. Notwithstanding anything herein to the contrary, the Board in its discretion may provide for Performance Awards to Covered Employees that are not intended qualify as "performance-based compensation" for purposes of Code Section 162(m).

##### **12.2.1. Performance Goals Generally.**

The performance goals for such Performance Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Board consistent with this **Section 12.2**. Following the end of the Transition Period, performance goals shall be objective and shall otherwise meet the requirements of Code Section 162(m) and regulations thereunder including the requirement that the level or levels of performance targeted by the Board result in the achievement of performance goals being "substantially uncertain." The Board may determine that such Performance Awards shall be granted, exercised and/or settled upon achievement of any one performance goal or that two or more of the performance goals must be achieved as a condition to grant, exercise and/or settlement of such Performance Awards. Performance goals may, in the discretion of the Board, be established on a Company-wide basis, or with respect to one or more business units, divisions, subsidiaries or business segments, as applicable. Performance goals may be absolute or relative (to the performance of one or more comparable companies or indices). Measurement of performance goals may exclude (in the discretion of the Board) the impact of charges for restructuring, discontinued operations, extraordinary items, and other unusual non-recurring items, and the cumulative effects of tax or accounting changes (each as defined by generally accepted accounting principles and as identified in the Company's financial statements or other SEC filings). Performance goals may differ for Performance Awards granted to any one Grantee or to different Grantees.

##### **12.2.2. Business Criteria.**

One or more of the following business criteria for the Company, on a consolidated basis, and/or specified subsidiaries or business units of the Company (except with respect to the total stockholder return and earnings per share criteria), shall be used exclusively by the Board in establishing performance goals for such Performance Awards: (i) cash flow; (ii) earnings per share, as adjusted for any stock split, stock dividend or other recapitalization; (iii) earnings measures; (iv) return on equity; (v) total shareholder return; (vi) share price performance, as adjusted for any stock split, stock dividend or other recapitalization; (vii) return on capital; (viii) revenue; (ix) income; (x) profit margin; (xi) return on operating revenue; (xii) brand recognition/acceptance; (xiii) customer satisfaction; (xiv) productivity; (xv) expense targets; (xvi) market share; (xvii) cost control measures; (xviii) balance sheet metrics; (xix) strategic initiatives; (xx) implementation, completion or attainment of measurable objectives with respect to recruitment or retention of personnel or employee satisfaction; or (xxi) any other business criteria established by the the Board; provided, however, that such business criteria shall include any derivations of business criteria listed above (e.g., income shall include pre-tax income, net income, operating income, etc.).



### **12.2.3. Timing for Establishing Performance Goals.**

Following the Transition Period, performance goals shall be established not later than 90 days after the beginning of any performance period applicable to such Performance Awards, or at such other date as may be required or permitted for “performance-based compensation” under Code Section 162(m).

### **12.2.4. Settlement of Performance Awards; Other Terms.**

Settlement of Performance Awards shall be in cash, Stock, other Awards or other property, in the discretion of the Board. The Board may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Performance Awards.

### **12.3. Written Determinations.**

All determinations by the Board as to the establishment of performance goals, the amount of any Performance Award pool or potential individual Performance Awards and as to the achievement of performance goals relating to Performance Awards, shall be made in writing in the case of any Award intended to qualify under Code Section 162(m) to the extent required by Code Section 162(m). To the extent permitted by Code Section 162(m), the Board may delegate any responsibility relating to such Performance Awards.

### **12.4. Status of Section 12.2 Awards under Code Section 162(m).**

The provisions of this **Section 12.4** are applicable following the Transition Period. It is the intent of the Company that Performance Awards under **Section 12.2** granted to persons who are designated by the Board as likely to be Covered Employees within the meaning of Code Section 162(m) and regulations thereunder shall, if so designated by the Board, constitute “qualified performance-based compensation” within the meaning of Code Section 162(m) and regulations thereunder. Accordingly, the terms of **Section 12.2**, including the definitions of Covered Employee and other terms used therein, shall be interpreted in a manner consistent with Code Section 162(m) and regulations thereunder. The foregoing notwithstanding, because the Board cannot determine with certainty whether a given Grantee will be a Covered Employee with respect to a fiscal year that has not yet been completed, the term Covered Employee as used herein shall mean only a person designated by the Board, at the time of grant of Performance Awards, as likely to be a Covered Employee with respect to that fiscal year. If any provision of the Plan or any agreement relating to such Performance Awards does not comply or is inconsistent with the requirements of Code Section 162(m) or regulations thereunder, such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.

## **13. OTHER STOCK-BASED AWARDS**

### **13.1. Grant of Other Stock-based Awards.**

Other Stock-based Awards may be granted either alone or in addition to or in conjunction with other Awards under the Plan. Other Stock-based Awards may be granted in lieu of other cash or other compensation to which a Service Provider is entitled from the Company or may be used in the settlement of amounts payable in shares of Common Stock under any other compensation plan or arrangement of the Company, including without limitation, the Company’s incentive compensation plan. Subject to the provisions of the Plan, the Board shall have the sole and complete authority to determine the persons to whom and the time or times at which such Awards shall be made, the number of shares of Common Stock to be granted pursuant to such Awards, and all other conditions of such Awards. Unless the Board determines otherwise, any such Award shall be confirmed by an Award Agreement, which shall contain such provisions as the Board determines to be necessary or appropriate to carry out the intent of this Plan with respect to such Award.

### **13.2. Terms of Other Stock-based Awards.**

Any Common Stock subject to Awards made under this **Section 13** may not be sold, assigned, transferred, pledged or otherwise encumbered prior to the date on which the shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses.

## **14. REQUIREMENTS OF LAW**

### **14.1. General.**

The Company shall not be required to sell or issue any shares of Stock under any Award if the sale or issuance of such shares would constitute a violation by the Grantee, any other individual exercising an Option, or the Company of any provision of any law or regulation of any governmental authority, including without limitation any federal or state securities laws or regulations. If at any time the Company shall determine, in its discretion, that the listing, registration or qualification of any shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of shares hereunder, no shares of Stock may be issued or sold to the Grantee or any other individual exercising an Option pursuant to such Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Specifically, in connection with the Securities Act, upon the exercise of any Option or the delivery of any shares of Stock underlying an Award, unless a registration statement under such Act is in effect with respect to the shares of Stock covered by such Award, the Company shall not be required to sell or issue such shares unless the Board has received evidence satisfactory to it that the Grantee or any other individual exercising an Option may acquire such shares pursuant to an exemption from registration under the Securities Act. Any determination in this connection by the Board shall be final, binding, and conclusive. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or the issuance of shares of Stock pursuant to the Plan to comply with any law or regulation of any governmental authority. As to any jurisdiction that expressly imposes the requirement that an Option shall not be exercisable until the shares of Stock covered by such Option are registered or are exempt from registration, the exercise of such Option (under circumstances in which the laws of such jurisdiction apply) shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

### **14.2. Section 25102(o) of the California Corporations Code.**

This Plan is intended to comply with Section 25102(o) of the California Corporations Code. In that regard, to the extent required by Section 25102(o), (i) the terms of any Options or SARs, to the extent vested and exercisable upon a Grantee's Separation from Service, shall include any minimum exercise periods following Separation from Service specified by Section 25102(o), and (ii) any repurchase right of the Company with respect to shares of Stock issued under the Plan shall include a minimum 90-day notice requirement. Any provision of this Plan which is inconsistent with Section 25102(o) shall, without further act or amendment by the Company or the Board, be reformed to comply with the requirements of Section 25102(o).

### 14.3. Rule 16b-3.

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards and the exercise of Options granted to officers and directors hereunder will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board or Committee does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Board, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Board may exercise its discretion to modify this Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

## 15. EFFECT OF CHANGES IN CAPITALIZATION

### 15.1. Adjustments for Changes in Capital Structure.

Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and class of shares subject to the Plan and to any outstanding Awards, and in the Option Price, SAR Exercise Price or Purchase Price per share of any outstanding Awards in order to prevent dilution or enlargement of Grantees' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to a Change in Control) shares of another corporation (the "New Shares"), the Board may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to, and the Option Price, SAR Exercise Price or Purchase Price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Board, in its discretion. Any fractional share resulting from an adjustment pursuant to this **Section 15.1** shall be rounded down to the nearest whole number and the Option Price, SAR Exercise Price or Purchase Price per share shall be rounded up to the nearest whole cent. In no event may the exercise price of any Award be decreased to an amount less than the par value, if any, of the stock subject to the Award. The Board in its sole discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. Adjustments determined by the Board pursuant to this **Section 15.1** shall be made in accordance with Section 409A to the extent applicable.

### 15.2. Change in Control.

#### 15.2.1. Consequences of a Change in Control.

Subject to the requirements and limitations of Section 409A if applicable, the Board may provide for any one or more of the following in connection with a Change in Control:

(a) **Accelerated Vesting.** The Board may, in its discretion, provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability, vesting and/or settlement in connection with such Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Grantee's Service prior to, upon, or following such Change in Control, to such extent as the Board shall determine.

(b) **Assumption, Continuation or Substitution.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the “**Acquiror**”), may, without the consent of any Grantee, either assume or continue the Company’s rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror’s stock, as applicable. For purposes of this **Section 15.2.1**, if so determined by the Board, in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled; *provided, however*, that if such consideration is not solely common stock of the Acquiror, the Board may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. If any portion of such consideration may be received by holders of Stock pursuant to the Change in Control on a contingent or delayed basis, the Board may, in its sole discretion, determine such Fair Market Value per share as of the time of the Change in Control on the basis of the Board’s good faith estimate of the present value of the probable future payment of such consideration. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(c) **Cash-Out of Awards.** The Board may, in its discretion and without the consent of any Grantee, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Board) of Stock subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control, reduced by the exercise or purchase price per share, if any, under such Award. If any portion of such consideration may be received by holders of Stock pursuant to the Change in Control on a contingent or delayed basis, the Board may, in its sole discretion, determine such Fair Market Value per share as of the time of the Change in Control on the basis of the Board’s good faith estimate of the present value of the probable future payment of such consideration. In the event such determination is made by the Board, the amount of such payment (reduced by applicable withholding taxes, if any) shall be paid to Grantees in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards. For avoidance of doubt, if the amount determined pursuant to this **Section 15.2.1(c)** for an Option or SAR is zero or less, the affected Option or SAR may be cancelled without any payment therefore.

#### **15.2.2. Change in Control Defined.**

Except as may otherwise be defined in an Award Agreement, a Change in Control shall mean the occurrence of any of the following events:

(a) the acquisition, other than from the Company, by any individual, entity or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), other than the Company or any subsidiary, affiliate (within the meaning of Rule 144 promulgated under the Securities Act of 1933, as amended) or employee benefit plan of the Company, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Voting Securities**”); or

(b) a reorganization, merger, consolidation or recapitalization of the Company (a “**Business Combination**”), other than a Business Combination in which more than 50% of the combined voting power of the outstanding voting securities of the surviving or resulting entity immediately following the Business Combination is held by the persons who, immediately prior to the Business Combination, were the holders of the Voting Securities; or

(c) a complete liquidation or dissolution of the Company, or a sale of all or substantially all of the assets of the Company; or

(d) during any period of 24 consecutive months, the Incumbent Directors cease to constitute a majority of the Board of Directors; “**Incumbent Directors**” shall mean individuals who were members of the Board of Directors at the beginning of such period or individuals whose election or nomination for election to the Board of Directors by the Company’s stockholders was approved by a vote of at least a majority of the then Incumbent Directors (but excluding any individual whose initial election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors).

Notwithstanding the foregoing, if it is determined that an Award hereunder is subject to the requirements of Section 409A and payable upon a Change in Control, the Company will not be deemed to have undergone a Change in Control unless the Company is deemed to have undergone a “change in control event” pursuant to the definition of such term in Section 409A.

### **15.3. Adjustments.**

Adjustments under this **Section 15** related to shares of Stock or securities of the Company shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share.

## **16. NO LIMITATIONS ON COMPANY**

The making of Awards pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets.

## **17. TERMS APPLICABLE GENERALLY TO AWARDS GRANTED UNDER THE PLAN**

### **17.1. Disclaimer of Rights.**

No provision in the Plan or in any Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company or any Affiliate either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company or any Affiliate. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise stated in the applicable Award Agreement, no Award granted under the Plan shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a Service Provider. The obligation of the Company to pay any benefits pursuant to this Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

## **17.2. Nonexclusivity of the Plan.**

Neither the adoption of the Plan nor the submission of the Plan to the stockholders of the Company for approval shall be construed as creating any limitations upon the right and authority of the Board to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals), including, without limitation, the granting of stock options as the Board in its discretion determines desirable.

## **17.3. Withholding Taxes.**

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by law to be withheld (i) with respect to the vesting of or other lapse of restrictions applicable to an Award, (ii) upon the issuance of any shares of Stock upon the exercise of an Option or SAR, or (iii) otherwise due in connection with an Award. At the time of such vesting, lapse, or exercise, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Company or the Affiliate, which may be withheld by the Company or the Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such obligations, in whole or in part, (i) by causing the Company or the Affiliate to withhold the minimum required number of shares of Stock otherwise issuable to the Grantee as may be necessary to satisfy such withholding obligation or (ii) by delivering to the Company or the Affiliate shares of Stock already owned by the Grantee. The shares of Stock so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value of the shares of Stock used to satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 17.3** may satisfy his or her withholding obligation only with shares of Stock that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements.

## **17.4. Right of First Refusal; Right to Repurchase.**

### **17.4.1. Right of First Refusal.**

Except as otherwise expressly provided in an Award Agreement, stockholders' agreement or other agreement to which a Holder is a party, at any time prior to registration by the Company of its Common Stock under Section 12 of the Exchange Act, in the event that the Holder desires at any time to sell or otherwise transfer all or any part of such Holder's Issued Shares (to the extent vested), the Holder first shall give written notice to the Company of the Holder's intention to make such transfer. Such notice shall state the number of Issued Shares which the Holder proposes to sell (the "Offered Shares"), the price and the terms at which the proposed sale is to be made and the name and address of the proposed transferee. At any time within 30 days after the receipt of such notice by the Company, the Company or its assigns may elect to purchase all or any portion of the Offered Shares at the price and on the terms offered by the proposed transferee and specified in the notice. The Company or its assigns shall exercise this right by mailing or delivering written notice to the Holder within the foregoing 30-day period. If the Company or its assigns elect to exercise its purchase rights under this **Section 17.4.1**, the closing for such purchase shall, in any event, take place within 45 days after the receipt by the Company of the initial notice from the Holder. In the event that the Company or its assigns do not elect to exercise such purchase right, or in the event that the Company or its assigns do not pay the full purchase price within such 45-day period, the Holder may, within 60 days thereafter, sell the Offered Shares to the proposed transferee and at the same price and on the same terms as specified in the Holder's notice. Any Issued Shares purchased by such proposed transferee shall no longer be subject to the terms of the Plan. Any Issued Shares not sold to the proposed transferee shall remain subject to the Plan.

#### **17.4.2. Right of Repurchase.**

Except as otherwise expressly provided in an Award Agreement, stockholders' agreement or other agreement to which a Grantee is a party, at any time prior to registration by the Company of its Common Stock under Section 12 of the Exchange Act, in the case of any Grantee whose Separation from Service is for Cause, or where the Grantee has, in the Board's reasonable determination, taken any action prior to or following his Separation of Service which would have constituted grounds for Cause, the Company shall have the right, exercisable at any time and from time to time thereafter, to repurchase from the Grantee (or any successor in interest by purchase, gift or other mode of transfer) any shares of Common Stock issued to such Grantee under the Plan for the purchase price paid by the Grantee for such shares of Common Stock (or the Fair Market Value of such Common Stock at the time of repurchase, if lower).

#### **17.5. Market Standoff Requirement.**

Except as otherwise expressly provided in an Award Agreement, stockholders' agreement or other agreement to which a Grantee is a party, in connection with any underwritten public offering of its Common Stock ("**Offering**") and upon request of the Company or the underwriters managing the Offering, Grantees shall not be permitted to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise directly or indirectly dispose of any Common Stock delivered under the Plan (other than those shares of Common Stock included in the Offering) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time from the effective date of the registration statement with respect to such Offering as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters in connection with such Offering.

#### **17.6. Captions.**

The use of captions in this Plan or any Award Agreement is for the convenience of reference only and shall not affect the meaning of any provision of the Plan or any Award Agreement.

#### **17.7. Other Provisions.**

Each Award Agreement may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Board, in its sole discretion. In the event of any conflict between the terms of an employment agreement and the Plan, the terms of the employment agreement govern.

#### **17.8. Number and Gender.**

With respect to words used in this Plan, the singular form shall include the plural form, the masculine gender shall include the feminine gender, etc., as the context requires.

#### **17.9. Severability.**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

#### **17.10. Governing Law.**

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law.

#### **17.11. Section 409A.**

The Plan is intended to comply with Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the “short-term deferral period” as defined in Section 409A shall not be treated as deferred compensation unless applicable laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following the Grantee’s Separation from Service shall instead be paid on the first payroll date after the six-month anniversary of the Grantee’s Separation from Service (or the Grantee’s death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Section 409A and neither the Company nor the Committee will have any liability to any Grantee for such tax or penalty.

#### **17.12. Separation from Service.**

The Board shall determine the effect of a Separation from Service upon Awards, and such effect shall be set forth in the appropriate Award Agreement. Without limiting the foregoing, the Board may provide in the Award Agreements at the time of grant, or any time thereafter with the consent of the Grantee, the actions that will be taken upon the occurrence of a Separation from Service, including, but not limited to, accelerated vesting or termination, depending upon the circumstances surrounding the Separation from Service.

#### **17.13. Transferability of Awards and Issued Shares.**

##### **17.13.1. Transfers in General.**

Except as provided in **Section 17.13.2**, no Award shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution, and, during the lifetime of the Grantee, only the Grantee personally (or the Grantee’s personal representative) may exercise rights under the Plan.

##### **17.13.2. Family Transfers.**

If authorized in the applicable Award Agreement, a Grantee may transfer, not for value, all or part of an Award (other than Incentive Stock Options) to any Family Member. For the purpose of this **Section 17.13.2**, a “not for value” transfer is a transfer which is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights; or (iii) a transfer to an entity in which more than fifty percent of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 17.13.2**, any such Award shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. Subsequent transfers of transferred Awards are prohibited except to Family Members of the original Grantee in accordance with this **Section 17.13.2** or by will or the laws of descent and distribution.



### 17.13.3. Issued Shares.

No Issued Shares shall be sold, assigned, transferred, pledged, hypothecated, given away or in any other manner disposed of or encumbered, whether voluntarily or by operation of law, unless (i) such transfer is in compliance with the terms of the applicable Award, all applicable securities laws, and with the terms and conditions of the Plan (including **Sections 17.4** and **17.5** and this **Section 17.13.3**), (ii) such transfer does not cause the Company to become subject to the reporting requirements of the Exchange Act, and (iii) the transferee consents in writing to be bound by the provisions of the Plan (including **Sections 17.4** and **17.5** and this **Section 17.13.3**). In connection with any proposed transfer, the Board may require the transferor to provide at the transferor's own expense an opinion of counsel to the transferor, satisfactory to the Board, that such transfer is in compliance with all foreign, federal and state securities laws. Any attempted disposition of Issued Shares not in accordance with the terms and conditions of this **Section 17.13.3** shall be null and void, and the Company shall not reflect on its records any change in record ownership of any Issued Shares as a result of any such disposition, shall otherwise refuse to recognize any such disposition and shall not in any way give effect to any such disposition of Issued Shares. Subject to the foregoing general provisions, and unless otherwise provided in the agreement with respect to a particular Award, Issued Shares may be transferred pursuant to the following specific terms and conditions:

(a) Transfers to Permitted Transferees. The Holder may sell, assign, transfer or give away any or all of the Issued Shares to Permitted Transferees; *provided, however*, that following such sale, assignment, or other transfer, such Issued Shares shall continue to be subject to the terms of this Plan (including **Sections 17.4** and **17.5** and this **Section 17.13.3**) and such Permitted Transferee(s) shall, as a condition to any such transfer, deliver a written acknowledgment to that effect to the Company.

(b) Transfers Upon Death. Upon the death of the Holder, any Issued Shares then held by the Holder at the time of such death and any Issued Shares acquired thereafter by the Holder's legal representative shall be subject to the provisions of this Plan, and the Holder's estate, executors, administrators, personal representatives, heirs, legatees and distributees shall be obligated to convey such Issued Shares to the Company or its assigns under the terms contemplated hereby.

### 17.14. Dividends and Dividend Equivalent Rights.

If specified in the Award Agreement, the recipient of an Award under this Plan may be entitled to receive, currently or on a deferred basis, dividends or dividend equivalents with respect to the Common Stock or other securities covered by an Award. The terms and conditions of a dividend equivalent right may be set forth in the Award Agreement. Dividend equivalents credited to a Grantee may be paid currently or may be deemed to be reinvested in additional shares of Stock or other securities of the Company at a price per unit equal to the Fair Market Value of a share of Stock on the date that such dividend was paid to shareholders, as determined in the sole discretion of the Board.

**Adopted by the Board on December 12, 2013**  
**Approved by Stockholders on December 12, 2013**  
**Termination Date: December 12, 2023**

**NOTICE OF GRANT OF [INCENTIVE/NON-QUALIFIED] STOCK OPTION AWARD**

**DvineWave Inc.  
2013 Equity Incentive Plan**

FOR GOOD AND VALUABLE CONSIDERATION, DvineWave Inc. (the “**Company**”) hereby grants, pursuant to the provisions of the Company’s 2013 Equity Incentive Plan (the “**Plan**”), to the Grantee designated in this Notice of Grant of [**Incentive/Non-Qualified**] Stock Option Award (the “**Notice**”) an option to purchase the number of shares of the Common Stock of the Company set forth in the Notice (the “**Shares**”), subject to certain restrictions as outlined below in this Notice and the additional provisions set forth in the attached Terms and Conditions of Stock Option Award (collectively, the “**Agreement**”). The terms and conditions of the Plan are incorporated by reference in their entirety into this Agreement. When used in this Agreement, the terms which are defined in the Plan shall have the meanings given to them in the Plan, as modified herein (if applicable).

<b>Grantee:</b> [ _____ ]	<b>Type of Option:</b> [ <b>Incentive/Non-Qualified</b> ] Stock Option
<b>Exercise Price per Share:</b> \$ _____	<b>Date of Grant:</b> _____
<b>Total Number of Shares Granted:</b> _____	<b>Expiration Date:</b> _____
<p><b>Vesting Schedule:</b></p> <p>The Option will vest and become exercisable as follows:</p> <p>Notwithstanding the foregoing Vesting Schedule, the Option will vest and become exercisable in accordance with any provisions contained in Grantee’s employment agreement that specifically address vesting of the Option, if any, and to the extent of any conflict the terms of such employment agreement shall control.</p>	

**Exercise After Separation from Service:**

*Separation from Service for any reason other than death, Disability or Cause:* any non-vested portion of the Option expires immediately and any vested portion of the Option remains exercisable for ninety (90) days following the Separation from Service;

*Separation from Service due to death or Disability:* any non-vested portion of the Option expires immediately and any vested portion of the Option remains exercisable for twelve (12) months following the Separation from Service;

*Separation from Service for Cause:* the entire Option, including any vested and non-vested portion, expires immediately upon Separation from Service.

**IN NO EVENT MAY THIS OPTION BE EXERCISED AFTER THE EXPIRATION DATE AS PROVIDED ABOVE.**

Notwithstanding the foregoing, the Option will remain exercisable in accordance with any provisions contained in Grantee's employment agreement that specifically address exercisability of this Option, if any, and to the extent of any conflict the terms of such employment agreement shall control.

By signing below, the Grantee agrees that this **[Incentive/Non-Qualified]** Stock Option Award is granted under and governed by the terms and conditions of the Company's 2013 Equity Incentive Plan and the attached Terms and Conditions.

**Grantee**

**DvineWave Inc.**

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TERMS AND CONDITIONS OF STOCK OPTION AWARD

1. Grant of Option. The Stock Option Award (the “**Award**”) granted by DvineWave Inc. (the “**Company**”) to the Grantee specified in the Notice of Grant of [**Incentive/Non-Qualified**] Stock Option Award (the “**Notice**”) to which these Terms and Conditions of Stock Option Award (the “**Terms**”) are attached, is subject to the terms and conditions of the Plan, the Notice, and these Terms. The terms and conditions of the Plan are incorporated by reference in their entirety into these Terms (the Plan is available upon request). Together, the Notice, all Exhibits to the Notice and these Terms constitute the “**Agreement.**” When used in this Agreement, the terms which are defined in the Plan shall have the meanings given to them in the Plan, as modified herein (if applicable). For purposes this Agreement, any reference to the Company shall include a reference to any Affiliate.

The Board has approved an award of an Options to the Grantee with respect to a number of shares of the Company’s Common Stock as set forth in the Notice, conditioned upon the Grantee’s acceptance of the provisions set forth in the Notice and these Terms within 60 days after the Notice and these Terms are presented to the Grantee for review.

If designated in the Notice as an Incentive Stock Option (“**ISO**”), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that the Option fails to meet the requirements of an ISO under Section 422 of the Code, this Option shall be treated as a Non-qualified Stock Option (“**NSO**”).

The Company intends that this Option not be considered to provide for the deferral of compensation under Section 409A and that this Agreement shall be so administered and construed. Further, the Company may modify the Plan and this Award to the extent necessary to fulfill this intent.

2. Exercise of Option.

(a) Right to Exercise. This Option shall be exercisable, in whole or in part, during its term in accordance with the Vesting Schedule set out in the Notice and with the applicable provisions of the Plan and this Agreement. No Shares shall be issued pursuant to the exercise of an Option unless the issuance and exercise comply with applicable laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Grantee on the date on which the Option is exercised with respect to such Shares. Until such time as the Option has been duly exercised and Shares have been delivered, the Grantee shall not be entitled to exercise any voting rights with respect to such Shares and shall not be entitled to receive dividends or other distributions with respect thereto. The Board may, in its discretion and pursuant to its administrative authority under Section 3.1 of the Plan, (i) accelerate vesting of the Option or (ii) extend the applicable exercise period of the Option.

(b) Method of Exercise. The Grantee may exercise the Option by delivering an exercise notice in a form approved by the Company (the “**Exercise Notice**”) which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Shares exercised. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

3. Method of Payment. If the Grantee elects to exercise the Option by submitting an Exercise Notice under Section 2(b) of this Agreement, the aggregate Exercise Price (as well as any applicable withholding or other taxes) shall be paid by cash or check; *provided, however*, that the Board may consent, in its discretion, to payment in any of the following forms, or a combination of them:
- (a) cash or check;
  - (b) a “net exercise” under which the Company reduces the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate Exercise Price and any applicable withholding, or such other consideration received by the Company under a cashless exercise program approved by the Company in connection with the Plan;
  - (c) surrender of other shares of Common Stock owned by the Grantee which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the exercised Shares and any applicable withholding; or
  - (d) any other consideration that the Board deems appropriate and in compliance with applicable law.
4. Restrictions on Exercise. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of the Shares upon exercise or the method of payment of consideration for those shares would constitute a violation of any applicable law, regulation or Company policy.
5. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of the Grantee only by the Grantee. The terms of the Plan and this Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Grantee.
6. Term of Option. This Option may be exercised only within the term set out in the Notice, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.
7. Withholding.
- (a) The Board shall determine the amount of any withholding or other tax required by law to be withheld or paid by the Company with respect to any income recognized by the Grantee with respect to the Option Award.
  - (b) The Grantee shall be required to meet any applicable tax withholding obligation in accordance with the provisions of Section 17.3 of the Plan.
  - [(c) If the Grantee makes any disposition of Shares delivered pursuant to the exercise of an ISO under the circumstances described in Section 421(b) of the Code (relating to certain disqualifying dispositions) or any successor provision of the Code, the Grantee shall notify the Company of such disposition within ten days of such disposition.]
8. Grantee Representations. The Grantee hereby represents to the Company that the Grantee has read and fully understands the provisions of the Notice, these Terms and the Plan, and the Grantee’s decision to participate in the Plan is completely voluntary. Further, the Grantee acknowledges that the Grantee is relying solely on his or her own advisors with respect to the tax consequences of this Award. The Grantee releases and holds the Company, and its officers, directors, employees and agents, harmless from any loss or claim related to or in any way connected with the tax consequences of the Option, including without limitation the treatment of the Option under Section 409A.

9. Regulatory Limitations on Exercises. Notwithstanding the other provisions of this Agreement, the Board shall have the sole discretion to impose such conditions, restrictions and limitations (including suspending the exercise of the Option and the tolling of any applicable exercise period during such suspension) on the issuance of Common Stock with respect to this Option unless and until the Board determines that such issuance complies with (i) any applicable registration requirements under the Securities Act or the Board has determined that an exemption therefrom is available, (ii) any applicable listing requirement of any stock exchange on which the Common Stock is listed, (iii) any applicable Company policy or administrative rules, and (iv) any other applicable provision of state, federal or foreign law, including foreign securities laws where applicable.
10. Right of First Refusal; Company Call Option. The exercise agreement by which the Option is exercised shall include a right of first refusal and call option in favor of the Company substantially similar to the terms set forth in Exhibit A to these Terms, applicable at any time prior to an Initial Public Offering.
11. Market Stand-off Agreement. In connection with an Initial Public Offering and upon request of the Company or the underwriters managing such Initial Public Offering, the Grantee agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Shares without the prior written consent of the Company or such underwriters, as the case may be, for such period of time from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of an Initial Public Offering.
12. Miscellaneous.
- (a) Notices. Any notice which either party hereto may be required or permitted to give to the other shall be in writing and may be delivered personally, by intraoffice mail, by fax, by electronic mail or other electronic means, or via a postal service, postage prepaid, to such electronic mail or postal address and directed to such person as the Company may notify the Grantee from time to time; and to the Grantee at the Grantee's electronic mail or postal address as shown on the records of the Company from time to time, or at such other electronic mail or postal address as the Grantee, by notice to the Company, may designate in writing from time to time.
- (b) Waiver. The waiver by any party hereto of a breach of any provision of the Notice or these Terms shall not operate or be construed as a waiver of any other or subsequent breach.
- (c) Entire Agreement. These Terms, the Notice and the Plan constitute the entire agreement between the parties with respect to the subject matter hereof. Any prior agreements, commitments or negotiations concerning the Award are superseded.
- (d) Binding Effect; Successors. These Terms shall inure to the benefit of and be binding upon the parties hereto and to the extent not prohibited herein, their respective heirs, successors, assigns and representatives. Nothing in these Terms, express or implied, is intended to confer on any person other than the parties hereto and as provided above, their respective heirs, successors, assigns and representatives any rights, remedies, obligations or liabilities.
- (e) Governing Law. The Notice and these Terms shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law.

(f) Headings. The headings contained herein are for the sole purpose of convenience of reference, and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of these Terms.

(g) Conflicts; Amendment. The provisions of the Plan are incorporated in these Terms in their entirety. In the event of any conflict between the provisions of these Terms and the Plan, the provisions of the Plan shall control. The Agreement may be amended at any time by the Board, provided that no amendment may, without the consent of the Grantee, materially impair the Grantee's rights with respect to the Option.

(h) No Right to Continued Employment. Nothing in the Notice or these Terms shall confer upon the Grantee any right to continue in the employ or service of the Company or affect the right of the Company to terminate the Grantee's employment or service at any time.

(i) Further Assurances. The Grantee agrees, upon demand of the Company or the Board, to do all acts and execute, deliver and perform all additional documents, instruments and agreements which may be reasonably required by the Company or the Board, as the case may be, to implement the provisions and purposes of the Notice and these Terms and the Plan.

(j) Confidentiality. The Grantee agrees that the terms and conditions of the Option award reflected in the Notice and these Terms are strictly confidential and, with the exception of Grantee's counsel, tax advisor, immediate family, or as required by applicable law, have not and shall not be disclosed, discussed, or revealed to any other persons, entities, or organizations, whether within or outside Company, without prior written approval of Company. The Grantee further agrees to take all reasonable steps necessary to ensure that confidentiality is maintained by any of the individuals or entities referenced above to whom disclosure is authorized.

## TERMS AND CONDITIONS OF STOCK OPTION AWARD

### EXHIBIT A

#### COMPANY'S RIGHT OF FIRST REFUSAL AND CALL OPTION

1. Company's Right of First Refusal. Shares that have previously become vested ("**Vested Shares**") may not be sold or otherwise transferred by the Grantee without the Company's prior written consent. Before any Vested Shares held by the Grantee or any permitted transferee of such Shares (either sometimes referred to herein as the "**Holder**") may be sold or otherwise transferred (including, without limitation, a transfer by gift or operation of law), the Company and/or its assignee(s) will have a right of first refusal to purchase the Vested Shares to be sold or transferred (the "**Offered Shares**") on the terms and conditions set forth in this Section (the "**Right of First Refusal**").
  - (a) Notice of Proposed Transfer. The Holder of the Offered Shares will deliver to the Company a written notice (the "**Notice**") stating: (i) the Holder's bona fide intention to sell or otherwise transfer the Offered Shares; (ii) the name and address of each proposed purchaser or other transferee (the "**Proposed Transferee**"); (iii) the number of Offered Shares to be transferred to each Proposed Transferee; (iv) the bona fide cash price or other consideration for which the Holder proposes to transfer the Offered Shares (the "**Offered Price**"); and (v) that the Holder acknowledges this Notice is an offer to sell the Offered Shares to the Company and/or its assignee(s) pursuant to the Company's Right of First Refusal at the Offered Price as provided for in this Exercise Agreement.
  - (b) Exercise of Right of First Refusal. At any time within thirty days after the date of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all (or, with the consent of the Holder, less than all) the Offered Shares proposed to be transferred to any one or more of the Proposed Transferees named in the Notice, at the purchase price, determined as specified below.
  - (c) Purchase Price. The purchase price for the Offered Shares purchased under this Section will be the Offered Price, provided that if the Offered Price consists of no legal consideration (as, for example, in the case of a transfer by gift) the purchase price will be the fair market value of the Offered Shares as determined in good faith by the Board. If the Offered Price includes consideration other than cash, then the value of the non-cash consideration, as determined in good faith by the Board, will conclusively be deemed to be the cash equivalent value of such non-cash consideration.
  - (d) Payment. Payment of the purchase price for the Offered Shares will be payable, at the option of the Company and/or its assignee(s) (as applicable), by check or by cancellation of all or a portion of any outstanding purchase money indebtedness owed by the Holder to the Company (or to such assignee, in the case of a purchase of Offered Shares by such assignee) or by any combination thereof. The purchase price will be paid without interest within sixty days after the Company's receipt of the Notice, or, at the option of the Company and/or its assignee(s), in the manner and at the time(s) set forth in the Notice.
  - (e) Holder's Right to Transfer. If all of the Offered Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise transfer such Offered Shares to each Proposed Transferee at the Offered Price or at a higher price, provided that (i) such sale or other transfer is consummated within one hundred twenty days after the date of the Notice, (ii) any such sale or other transfer is effected in compliance with all applicable securities laws, and (iii) each Proposed Transferee agrees in writing that the provisions of this Section will continue to apply to the Offered Shares in the hands of such Proposed Transferee. If the Offered Shares described in the Notice are not transferred to each Proposed Transferee within such one hundred twenty day period, then a new Notice must be given to the Company pursuant to which the Company will again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.



(f) Exempt Transfers. Notwithstanding anything to the contrary in this Section, the following transfers of Vested Shares will be exempt from the Right of First Refusal: (i) the transfer of any or all of the Vested Shares during Purchaser's lifetime by gift or on Purchaser's death by will or intestacy to a Family Member of Purchaser, provided that each transferee or other recipient agrees in a writing satisfactory to the Company that the provisions of this Section will continue to apply to the transferred Vested Shares in the hands of such transferee or other recipient; (ii) any transfer of Vested Shares made pursuant to a statutory merger or statutory consolidation of the Company with or into another corporation or corporations (except that the Right of First Refusal will continue to apply thereafter to such Vested Shares, in which case the surviving corporation of such merger or consolidation shall succeed to the rights of the Company under this Section unless the agreement of merger or consolidation expressly otherwise provides); or (iii) any transfer of Vested Shares pursuant to the winding up and dissolution of the Company.

(g) Termination of Right of First Refusal. The Right of First Refusal will terminate as to all Shares upon an Initial Public Offering.

(h) Encumbrances on Vested Shares. Purchaser may grant a lien or security interest in, or pledge, hypothecate or encumber Vested Shares only if each party to whom such lien or security interest is granted, or to whom such pledge, hypothecation or other encumbrance is made, agrees in a writing satisfactory to the Company that: (i) such lien, security interest, pledge, hypothecation or encumbrance will not apply to such Vested Shares after they are acquired by the Company and/or its assignees under this Section; and (ii) the provisions of this Section will continue to apply to such Vested Shares in the hands of such party and any transferee of such party. Purchaser may not grant a lien or security interest in, or pledge, hypothecate or encumber, any Shares that have not yet become vested.

2. Company's Call Option. In addition to all other restrictions and conditions applicable under the Plan, this Agreement and otherwise to Shares issued upon the exercise of the Option, Vested Shares shall be issued subject to the following terms and conditions:

(a) Call Notice. At any time during the ninety day period beginning on the date of the Grantee's Separation from Service for any reason, the Company shall have the right and option (the "**Repurchase Option**") to purchase from the Grantee or his or her heirs or personal representative, all, but not less than all, of the Vested Shares that are outstanding as of the date of Separation from Service, which right may be exercised by giving written notice of such exercise (a "**Call Notice**") to the Grantee or his or her heirs or personal representative. The purchase price of such Vested Shares shall be the Fair Market Value of such Vested Shares as of the date of Separation from Service, provided that if the Separation from Service is for Cause, the purchase price for the Vested Shares shall be for the lesser of (A) the Fair Market Value of such Vested Shares as of the date of Separation from Service or (B) the purchase price paid by the Grantee to acquire such Vested Shares.

(b) Closing. The closing of a purchase of Vested Shares under this Section shall be held at the principal office of the Company on a date and time specified in the Call Notice (the "**Closing Date**"). The Closing Date shall in no event be more than ninety days, or less than thirty days, after the date of such Call Notice. At the closing, the Company shall deliver to the Grantee or his or her heirs or personal representative the purchase price in cash and the Grantee shall deliver to the Company (A) such instruments as the Company shall reasonably request evidencing the transfer of the Vested Shares and (B) if requested by the Company, all necessary transfer tax stamps.

(c) Legends. The Company may at any time place legends on the certificates representing Vested Shares referencing the restrictions imposed by this Agreement or require that any Vested Shares be placed in escrow.

(d) Termination of Repurchase Option. The Company's Repurchase Option shall terminate as to all Shares for which a Closing Date has not yet occurred upon an Initial Public Offering.



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only October 4, 2013, is made by and between ProSoft Engineering, Inc., a California corporation ("Lessor") and Dvinewave Inc., a Delaware corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 303 Ray Street, located in the City of Pleasanton, County of Alameda, State of California, with zip code 94566, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): a 3,562±SF condominium which is part of a larger stand alone building commonly known as 303 Ray Street.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) Parking: ten (10) unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 Term: zero(0) years and eight(8) months ("Original Term") commencing October 4, 2013 ("Commencement Date") and ending , June 4, 2014 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing none ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 6,055.40 per month ("Base Rent"), payable on the fifteenth day of each month commencing October, 2013 (See also Paragraph 4)
S If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50

1.6 Lessee's Share of Common Area Operating Expenses: one hundred percent (100%) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$6,055.40 for the period October 4, 2013 – November 4, 2013.
(b) Common Area Operating Expenses: \$ \_\_\_\_\_ for the period \_\_\_\_\_ .
(c) Security Deposit: \$6,055.40 ("Security Deposit"). (See also Paragraph 5)
(d) Other: \$N/A for N/A.
(e) Total Due Upon Execution of this Lease: \$12,110.80.

1.8 Agreed Use: office and administration. (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- [x] Lee & Associates – East Bay, Inc. represents Lessor exclusively ("Lessor's Broker");
[x] Colliers International represents Lessee exclusively ("Lessee's Broker"); or
[ ] \_\_\_\_\_ represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in the attached a separate written agreement or if no such agreement is attached, the sum of \_\_\_\_ or \_\_\_\_ % of the total Base Rent payable for the Original Term, the sum of \_\_\_\_\_ or \_\_\_\_\_ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by none ("Guarantor"). (See also Paragraph 37)

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- [x] an Addendum consisting of Paragraphs 50 through 55;
[ ] a site plan depicting the Premises;
[ ] a site plan depicting the Project;
[ ] a current set of the Rules and Regulations for the Project;
[ ] a current set of the Rules and Regulations adopted by the owners' association;
[ ] a Work Letter;
[ ] other (specify); .. \_\_\_\_\_



## 2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of the parties as set forth in Paragraph 7 below.

2.3 **Compliance.** Lessor warrants that the Premises and the improvements on the Premises and the Common Areas comply with the building codes and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("**Applicable Requirements**"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, such costs reasonably attributable to the Premises as amortized over its useful life. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be

used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

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(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of

insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) The following costs relating to the ownership and operation of the Project are defined as "**Common Area Operating Expenses**":

(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

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(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over its useful life and Lessee shall not be required to pay more than Lessee's Share of the monthly amortized cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Operating Expenses shall not include: (1) any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds; (2) rent paid to any ground lessor; (3) association fees or assessments; (4) repairs, alterations, additions, improvements, or replacements needed to rectify or correct any defects in the original design, materials, or workmanship of Project or common areas; (5) damage and repairs necessitated by the negligence or willful misconduct of Lessor, Lessor's employees, contractors, or agents; (6) executive salaries or salaries of service personnel to the extent that such personnel perform services not in connection with the management, operation, repair, or maintenance of the Project; (7) Lessor's general overhead expenses not related to the Project; (8) any insurance deductibles or self-insurance retentions; (9) cost of any capital improvements except as expressly set forth in Paragraph 4.2(a)(viii) above (unless otherwise excluded), and (10) a manage fee (including all costs associated with management and administrative fees) not to exceed three (3) percent of gross rents.

**4.3 Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the

Security Deposit separate from its general accounts. Within 30 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

**6. Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

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## 6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered-by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice,

citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

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6.4 **Inspection; Compliance.** Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

## 7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

### 7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in the same order, condition and repair as received (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the useful life as measured in months. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

### 7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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#### 7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor at the time Lessor consents to such Lessee Owned Alteration or Utility Installation, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

#### 8. **Insurance; Indemnity.**

##### 8.1 **Payment of Premium Increases.**

(a) As used herein, the term "**Insurance Cost Increase**" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "**Base Premium**" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

##### 8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

##### 8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said

insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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#### 8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

#### 9. **Damage or Destruction.**

##### 9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

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9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, either party may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to the other party within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

#### 9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

## 10. **Real Property Taxes.**

### 10.1 **Definitions.**

(a) "**Real Property Taxes.**" As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term

of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) "**Base Real Property Taxes.**" As used herein, the term "**Base Real Property Taxes**" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

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10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's reasonable judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 50% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

### 13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. **THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.**

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 5% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time the Lease was executed.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee may pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed

to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

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16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project and all rents, proceeds, incomes and awards derived therefrom, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

### 30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a

legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

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**35. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**36. Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

**37. Guarantor.**

**37.1 Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

**37.2 Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

**38. Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**39. Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

**39.1 Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**41. Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

**42. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

**43. Authority.; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**44. Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**45. Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

**46. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

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47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease £ is S is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: £ have not undergone an inspection by a Certified Access Specialist (CASp). £ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. £ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

**LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.**

**ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:**

- SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
- RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE. WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.**

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

**By LESSOR:**

**By LESSEE:**

ProSoft Engineering, Inc.,  
a California corporation

Dvinewave Inc.  
a Delaware corporation

By: \_\_\_\_\_  
Name Printed: /s/ Greg Brewer  
Title: Greg Brewer  
CEO

By: \_\_\_\_\_  
Name Printed: /s/ Michael Leabman  
Title: Michael Leabman  
President

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 1599 Greenville Road  
Livermore, CA 94550

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 207 Veritas Court  
San Ramon, CA 94582

Telephone: (925) 426-6100  
Facsimile: ( )  
Federal ID No. \_\_\_\_\_

Telephone: ( 408 ) 393-1209  
Facsimile: ( )  
Federal ID No. \_\_\_\_\_

**BROKER:**  
Lee & Associates – East Bay, Inc.

**BROKER:**  
Colliers International

Attn: Aron Hoenninger  
Title: Principal  
Address: 5890 Stoneridge Drive, Suite 210  
Pleasanton, CA 94588

Attn: Jim Abarta  
Title: Sr. Vice President  
Address: 3825 Hopyard Road #195  
Pleasanton, CA 94588

Telephone: (925) 737-4155  
Facsimile: (925) 460-6210  
Email: ahoenninger@lee-associates.com  
Federal ID No. \_\_\_\_\_

Telephone: 925 227-6228  
Facsimile: 925 463-0747  
Email: Jim.Abarta@Colliers.com  
Federal ID No. \_\_\_\_\_

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203.**

**Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

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**ADDENDUM**

**Date:** October 4, 2013

**By and Between (Lessor)** Prosoft Engineering, Inc., a California corporation  
**(Lessee)** DvineWave Inc., a Delaware corporation

**Address of Premises:** 303 Ray Street  
Pleasanton, CA 94588

Paragraph 50 -55

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

50. Rent Schedule  
Months Amount/Gross  
1 - 8 \$ 6,055.40 per month

51. This Lease shall continue on a month to month basis at the Expiration Date on the same terms and conditions as set forth in this Lease.

52. In addition to Lessee's base rent Lessee shall only be responsible for payment of janitorial and electrical cost.

53. Notwithstanding Paragraph 13.4, Lessor will not assess a late charge until Lessor has given written notice of such late payment for the first late payment and after Lessee has not cured such late payment within three (3) days from receipt of such notice. No other notices will be required for a late charge to be incurred.

54. Notwithstanding anything to the contrary, Lessee may, without Lessor's prior written consent, sublet the Premises or assign the Lease to: (i) a parent, subsidiary, affiliate, division or corporation controlling, controlled by or under common control with Lessee; (ii) an acquirer or purchaser of all or substantially all of Lessee's assets; (iii) any entity resulting from a merger, consolidation, or other reorganization of Lessee; and/or (iv) any entity or person by sale or other transfer of a percentage of capital stock, equity or ownership of Lessee which results in a change of controlling persons. Any of the above are referenced hereafter as "Permitted Transfer" and the transferee is referenced as "Permitted Transferee". For the purpose of this Lease, sale of Lessee's capital stock through any public exchange, the issuances for purposes of raising financing or the distribution of Lessee's assets resulting from the dissolution of Lessee shall not be deemed an assignment, subletting, or any other transfer of the Lease or the Premises.

55. Notwithstanding Paragraph 1.3, Lessee may terminate the lease upon 30 days written notice.

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INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of DvineWave, Inc. on Form S-1 of our report dated December 16, 2013, with respect to our audit of the financial statements of DvineWave, Inc. as of December 31, 2012 and for the period October 30, 2012 (Inception) through December 31, 2012, which report appears in the Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Prospectus.

/s/ Marcum LLP

Marcum LLP  
Melville, NY  
December 16, 2013

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