



MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT ("**Agreement**") is made and entered into as of the date last set forth on the signature page hereto ("**Effective Date**") by and between **DZYNE Technologies LLC**, a Delaware corporation, having a place of business at 8280 Willow Oaks Corporate Drive, Suite 200, Fairfax, VA 22031 (hereinafter referred to as "**DZYNE**") and _____, a _____, having a place of business at _____ (hereinafter referred to as ("_____")) (hereinafter collectively, the "**Parties**" and each, a "**Party**"), to protect certain Proprietary Information (as defined below) of the Parties in connection with entering into a potential business (the "**Purpose**").

1. **DEFINITION.** As used herein, the term "**Proprietary Information**" shall mean any and all financial, technical, commercial or other information concerning the business and affairs of either Party ("**Disclosing Party**") that has been or may hereafter be provided or shown to the other Party ("**Recipient**") or its employees, officers, directors, affiliates, representatives, agents or advisors (collectively, "**Representatives**"), irrespective of the form of the communication, by Disclosing Party or its Representatives, and also includes all notes, analyses, compilations, studies or other material prepared by Recipient or its Representatives containing or based, in whole or in part, on any information provided or shown by Disclosing Party or by its Representatives. The term Proprietary Information shall not include information which, as supported with written documentary evidence:

- a. Was or becomes generally available to the public other than as a result of disclosure by Recipient or its Representatives;
- b. Was available to Recipient on a non-confidential basis prior to its disclosure to Recipient by Disclosing Party or its Representatives, provided that the source of such information is not bound by a confidentiality agreement with Disclosing Party or its Representatives or otherwise prohibited from transmitting the information to Recipient or its Representatives by a contractual, legal or fiduciary obligation;
- c. Becomes available to Recipient or its Representatives on a non-confidential basis from a source other than Disclosing Party or its Representatives, provided that such source is not bound by a confidentiality agreement with Disclosing Party or its Representatives or otherwise prohibited from transmitting the information to Recipient or its Representatives by a contractual, legal or fiduciary obligation; or
- d. Was developed by employees or agents of Recipient who had no access to any Proprietary Information of Disclosing Party.

2. **REQUIREMENTS OF PROPRIETARY INFORMATION.** In order for Proprietary Information disclosed by Disclosing Party to Recipient to be protected in accordance with this Agreement, it must be: (a) in a humanly perceptible form, including any hand-written or machine-generated versions and all physical or electronic forms thereof, any graphical, photographic, audio or video representations, any two or three dimensional models, prototypes or mock-ups, and any software source code, object code, or related information; (b) transmitted either by hand or through the use of any machine, computer, or other device, and (c) clearly identified as Proprietary Information at the time of its disclosure by being marked with an appropriate legend indicating that the information is deemed proprietary by the Disclosing Party (written materials shall be marked with such a legend on each page thereof). Where the Proprietary Information has not been or cannot be reduced to written form at the time of disclosure and such disclosure is made orally, visually or in any other non-written form, and with prior or contemporaneous assertion of proprietary rights therein, such Proprietary Information shall only be protected in accordance with this



Agreement if written summaries of all proprietary aspects of any such disclosures shall have been delivered by Disclosing Party to Recipient within 30 calendar days of said non-written disclosures. Notwithstanding the foregoing, reports and information related to or regarding Disclosing Party's business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, billing records, and products or services shall be deemed Proprietary Information of Disclosing Party even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Paragraph 1 above. Neither Party shall identify information as proprietary which is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary claims.

3. **CONFIDENTIAL RELATIONSHIP.** Recipient agrees that it shall not reproduce, disclose, sell, assign, transfer, license, lease, use or convey in any other manner, in whole or in part, the Proprietary Information for any purpose other than the Purpose and shall not exploit the Proprietary Information for its own benefit or the benefit of another without the prior written consent of Disclosing Party. Recipient further agrees that it shall refrain from using the Proprietary Information in any way detrimental to Disclosing Party. Recipient agrees that it shall disclose any Proprietary Information received under this Agreement only to persons within its organization who have a need to know such Proprietary Information in the course of the performance of their duties and who are bound to protect the confidentiality and proprietary nature of such information. Proprietary Information may be disclosed to Representatives of Recipient who require such material for the Purpose, provided that each, prior to disclosure, is bound by a signed written agreement to protect the confidentiality of such Proprietary Information.

Recipient shall be responsible for any breach of the terms of this Agreement by it or its Representatives. The standard of care for protecting Proprietary Information imposed on Recipient shall be that degree of care Recipient uses to prevent disclosure, publication or dissemination of its own Proprietary Information of a similar nature and sensitivity, but in no event less than a reasonable standard of care considering the nature of the disclosed Proprietary Information. Neither Party shall be liable for the inadvertent or accidental disclosure of Proprietary Information if such disclosure occurs despite the exercise of this standard of care.

Recipient shall notify Disclosing Party in writing upon discovery of any inadvertent disclosure or unauthorized use of Proprietary Information, and Recipient shall promptly notify Disclosing Party and shall use reasonable efforts to retrieve such Proprietary Information and to prevent any further inadvertent disclosure or unauthorized use thereof. Recipient shall not reverse-engineer, decompile, or disassemble any software disclosed to it under this Agreement and shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Proprietary Information it obtains from Disclosing Party.

4. **NON-DISCLOSURE OF RELATIONSHIP.** Each Party agrees that, except as required by law, neither it nor its Representatives will disclose to any person the fact that Proprietary Information has been made available, that discussions or negotiations are taking place or have taken place concerning a possible business relationship between the Parties or any of the terms, conditions or other facts with respect to such possible business relationship, including the status thereof.

5. **NATURE OF PROPRIETARY INFORMATION.** The Parties acknowledge that all Proprietary Information (a) is represented to be owned solely by Disclosing Party; (b) shall remain the exclusive property of Disclosing Party; (c) is represented to be such that would, if disclosed without due authorization, cause irreparable harm to Disclosing Party. The provision of Proprietary Information hereunder shall not transfer any right, title or interest in such information to Recipient. Recipient acknowledges that no right or license, express or implied, is granted hereunder with respect to any Proprietary Information disclosed hereunder by Disclosing Party.



6. **LEGALLY COMPELLED DISCLOSURE.** If Recipient or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose Disclosing Party's Proprietary Information, Recipient shall provide prompt notice of such request or requirement in order to enable Disclosing Party (a) to seek an appropriate protective order or other remedy, at Disclosing Party's expense; (b) to consult with Recipient with respect to Disclosing Party's taking steps to resist or narrow the scope of such request or legal process, at Disclosing Party's expense; or (c) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, Recipient or its Representatives shall use commercially reasonable efforts to disclose only that portion of the Proprietary Information which is legally required to be disclosed and to ensure that all Proprietary Information that is so disclosed will be accorded confidential treatment. In the event that Recipient or its Representatives shall have complied fully with the provisions of this Section and fully cooperated with Disclosing Party, such disclosure may be made by Recipient or its Representatives without any liability hereunder.

7. **TERM.** The period for exchange of Proprietary Information under this Agreement shall end three (3) years after the effective date of this Agreement unless such period is extended by the written agreement of the Parties. Either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Proprietary Information disclosed prior to such termination.

Upon expiration or termination of this Agreement, Recipient will cease all use of Proprietary Information received hereunder. The obligations of Recipient hereunder shall survive until the earlier of (a) such time as all Proprietary Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Recipient or (b) 5 years from the date of termination or expiration of this Agreement. Notwithstanding the foregoing, this Agreement shall remain in effect with regard to Proprietary Information that qualifies as a trade secret under applicable law for as long as such information continues to qualify as a trade secret. Additionally, Proprietary Information developed under the U.S. Government's Small Business Innovation Research (SBIR) program ("**SBIR Proprietary Information**") shall not be disclosed to any third party at any time without written permission from the Disclosing Party, for as long as the SBIR Proprietary Information is under the protection of the SBIR program. SBIR Proprietary Information shall be clearly identified by appropriate and conspicuous markings and all provisions of this agreement shall survive with respect to such information.

8. **DISCLAIMER.** DISCLOSING PARTY IS PROVIDING THE PROPRIETARY INFORMATION ON AN "AS-IS" BASIS FOR USE BY RECIPIENT AT ITS OWN RISK. DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE INFORMATION'S COMPLETENESS, ADEQUACY, SUFFICIENCY, OR FREEDOM FROM DEFECT, INCLUDING FREEDOM FROM ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY THAT MAY RESULT FROM THE USE OF SUCH INFORMATION OR ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

9. **NO BUSINESS RELATIONSHIP.** Each Party understands and agrees that no contract or agreement providing for a business relationship (other than the confidential relationship referred to in Paragraph 2 above) shall be deemed to exist between the Parties unless and until a definitive agreement ("**Transaction Agreement**") provides for such relationship has been executed and delivered by each Party. For purposes of this Paragraph 9, the term Transaction Agreement does not include an executed letter of intent or any other preliminary written agreement, nor does it include any written or verbal acceptance of an offer or bid by any Party. The Parties expressly agree that the provision of Proprietary Information hereunder and discussions held in connection with the Purpose shall not (a) prevent either Party from pursuing similar discussions with third parties or obligate either Party to take, continue to forego any action relating to the



Purpose (subject to its confidentiality obligations hereunder), or (b) require either Party to disclose any such discussions or action now or in the future.

10. **DEFEND TRADE SECRETS ACT.** Notwithstanding any other provisions of this Agreement, in accordance with the Defend Trade Secrets Act of 2016 (the “**DTSA**”), the Parties shall ensure that their respective employees, contractors, subcontractors or any other persons who may be operating on their behalf in regard to trade secret information covered by this Agreement understand that:

a. An individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (i) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

b. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to his or her attorney and use the trade secret information in the court proceeding if the individual: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

11. **NON-SOLICITATION.** For a period of two (2) years from the Effective Date of this Agreement, Recipient agrees not to solicit for hire, hire, or employ any employees of Disclosing Party or any of its Representatives except (a) in connection with and as an express term of a Transaction Agreement actually consummated between Recipient and Disclosing Party; or (b) pursuant to a broadly distributed solicitation for employment which is not exclusively directed to any of Disclosing Party’s employees.

12. **RETURN OF PROPRIETARY INFORMATION.** Upon written notice from Disclosing Party, Recipient shall: (a) return all documentary materials, software, specimens and other Proprietary Information of Disclosing Party received under this Agreement and shall retain no copies or duplicates thereof; (b) destroy all notices and memoranda made by it that contain Disclosing Party’s Proprietary Information; and (c) certify to Disclosing Party in writing that it has fully complied with the obligations contained in foregoing clauses (a) and (b). Recipient may retain copies of Disclosing Party’s Proprietary Information solely to the extent (i) required by applicable law or regulation or (ii) created by technical, automatic archiving or backup processes maintained in the ordinary course of business, provided that Recipient’s obligations under this Agreement survive pursuant to Paragraph 7 above.

13. **EXPORT REGULATIONS.** All exports of information from the United States or from any country foreign thereto and any subsequent re-export therefrom shall comply with the laws and regulations of the United States and said foreign country, respectively, as applicable, relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (the “**ITAR**”) and the Export Administration Regulations (the “**EAR**”). Except as specifically authorized by U.S. Government regulations, Recipient shall not transfer Proprietary Information to any Foreign Person (as defined in Section 120.16 of the ITAR). Where the disclosure of any Proprietary Information may require a license therefore due to the export control laws of either the United States or said foreign country, Recipient shall obtain said license before making any disclosure of such Proprietary Information and shall provide conspicuous and appropriate notice at the time of disclosure that disclosure of such Proprietary Information is subject to said license. Recipient shall obtain the written consent of Disclosing Party prior to submitting any request for authority to export any Proprietary Information. Recipient shall indemnify and hold Disclosing Party harmless from all claims, demands, damages, costs, fines, penalties, attorneys’ fees, and all other expenses arising from failure of Recipient to comply with this Paragraph 13, the ITAR or the EAR.



14. **INJUNCTIVE RELIEF.** Recipient acknowledges that use or disclosure by it of Disclosing Party's Proprietary Information except as permitted by this Agreement may cause immediate and irreparable harm to Disclosing Party for which money damages may be inadequate. Therefore, Disclosing Party will be entitled to obtain injunctive relief for Recipient's breach of any of its obligations hereunder without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such breach but shall be in addition to all other remedies available at law or in equity.

15. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Parties, their agents, servants, employees, successors, and assigns, and shall inure to the benefit of the Parties and their respective successors and assigns; provided, however, this Agreement may not be assigned by any Party without the written consent of the other Party; provided, further, that, a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. Any consent required by this Paragraph 15 shall not be unreasonably withheld.

16. **GOVERNING LAW, VENUE AND ATTORNEYS' FEES.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without regard to conflicts of laws principles. The Parties hereby consent to personal jurisdiction of the courts of the State of California with respect to any legal action to enforce the terms and conditions of this Agreement or otherwise arising under or with respect to this Agreement, and agree that the Superior Court of California, County of Orange, or, if applicable, federal District Court sitting in the County of Orange, State of California, shall be the sole and exclusive venue, and the State of California shall be the sole forum, for the bringing of such action. The prevailing party shall be entitled to recover all of its reasonable attorneys' fees, expenses and costs.

17. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the Parties relative to the protection of information exchanged in connection with the Purpose and supersedes any prior or collateral agreements or understandings, written or oral pertaining thereto. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by duly authorized representative of the Parties. This Agreement shall apply in lieu of and notwithstanding the specific legends or statements associated with any particular information.

18. **SEVERABILITY.** Any provision of this Agreement which shall be found to be in conflict with any state or federal statutes, laws, regulations and orders shall be ineffective only to the extent of such conflict, and such conflict shall not invalidate or annul any other provision of this Agreement not so in conflict.

19. **RELATIONSHIP OF THE PARTIES.** This Agreement is not intended to be, nor shall it be considered as, a "team" arrangement, joint venture, partnership or other formal business organization, and unless otherwise agreed, no Party shall have the right or obligation to share any of the profits or bear any of the risks or losses of any other Party. At all times the Parties shall remain independent contractors with each responsible for its Representatives.

20. **NOTICES.** Any notice required by this Agreement or given in connection with it, shall be in writing to the designated point of contact in Paragraph 24 below and shall be effective when received by the other Party at the designated address by personal delivery, electronic mail, first class mail postage prepaid, or recognized overnight delivery services at the Parties' respective addresses, or at such other address as a Party may provide by written notice to the other Party from time to time.

21. **INTERPRETATION.** The paragraph headings throughout this Agreement are for reference purposes only, and such headings and words shall in no way be held to explain or aid in the interpretation, construction or meaning of the provisions of this Agreement. The Parties each acknowledge that they



have had the opportunity to consult legal counsel with respect to this Agreement, and that each Party has had a role in negotiating the terms of the Agreement. This Agreement shall be construed within its fair meaning, and no inference shall be drawn against the drafting Party in interpreting this Agreement.

22. **WAIVER.** Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party from whom the waiver is sought. Any waiver shall be effective only for the particular instance for which it is granted and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

23. **COUNTERPARTS AND FACSIMILES.** The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.

24. **CONTACTS.** The Parties designate the following individuals as primary, but not sole, contacts for disclosing or receiving Proprietary Information.

DZYNE

Name: Richard Malone
Address: 11 Vanderbilt
Irvine, CA 92618
Phone: 949.464.4053
E-mail: r Malone@dzyntech.com

Name: _____
Address: _____
Phone: _____
E-mail: _____

All notices required to be sent pursuant to this Agreement shall be sent to the following individuals:

DZYNE

Name: Russell Garing
Address: 8280 Willow Oaks Corp. Drive
Suite 200
Fairfax, VA 22031
Phone: 703.454.0705
E-mail: NDA@dzyntech.com

Name: _____
Address: _____
Phone: _____
E-mail: _____

IN WITNESS WHEREOF, the Parties have executed this Mutual Nondisclosure Agreement as of the date last set forth below.

DZYNE TECHNOLOGIES LLC

Signature
Richard Malone, Director of Supply Chain

Name, Title

Date

Signature

Name, Title

Date