

# MUTUAL NON-DISCLOSURE AGREEMENT

## CONFIDENTIALITY AND MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into, date at the \_\_\_\_\_, Of Year \_\_\_\_\_. ("Effective Date"),  
By and between: \_\_\_\_\_  
and \_\_\_\_\_.

**WHEREAS**, for the purpose as stated in Section 2 below, the Parties have determined to establish terms governing the use and protection of Confidential Information (as defined in Section 1 below) that one Party ("**Owner**") may disclose to the other Party ("**Recipient**").

**NOW, THEREFORE**, the Parties agree as follows:

1. "**Confidential Information**" means information that relates to the purpose stated in Section 2 below or that, although not related to such purpose, is nevertheless disclosed as a result of the Parties' discussions in that regard, and that should reasonably have been understood by the Recipient, because of legends or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the Owner, an Affiliate of the Owner or to a third party. Confidential Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. The term "**Affiliate**" means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party. Confidential Information includes, without limitation, software, computer codes, trade secrets, know-how, inventions, techniques, processes, programs, algorithms, schematics, data, database structure, customer lists, financial information, sales and marketing plans, pricing information, contracts, sales quotations, customer names, and customer contact information.

2. A Recipient of Confidential Information may use the Confidential Information only for the purpose of marketing and sales of previously agreed owner product and services

3. Recipient shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care. Confidential Information shall not be disclosed to any third party without the prior written consent of the Owner. Recipient shall not use the Confidential Information for any reason other than for the purpose provided for in Section 2. Recipient shall only disclose the Confidential Information to those employees, Affiliate employees, agents and consultant on a need to know basis.

4. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

(a) Was publicly known at the time of Owner's communication thereof to Recipient;

(b) Becomes publicly known through no fault of Recipient subsequent to the time of Owner's communication thereof to Recipient;

(c) Was in Recipient's possession free of any obligation of confidence at the time of Owner's communication thereof to Recipient, as evidenced by Recipient's written records;

(d) Is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or

(e) Is identified by Owner as no longer proprietary or confidential.

5. In the event Recipient is required by law, regulation or court order to disclose any of Owner's Confidential Information, Recipient will promptly notify Owner in writing prior to making any such disclosure in order to facilitate Owner seeking a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate with Owner in seeking such order or other remedy. Recipient further agrees that if Owner is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

6. All Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of Owner. All such information in tangible form shall be returned to Owner promptly upon written request or the termination or expiration of this Agreement, and shall not thereafter be retained in any form by Recipient, its Affiliates, or any employees or independent contractors of Recipient or its Affiliates.

7. No licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied by this Agreement. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

8. Owner shall not have any liability or responsibility for errors or omissions in, or any decisions made by Recipient in reliance on, any Confidential Information disclosed under this Agreement.

9. This Agreement shall become effective as of the date first written above and shall automatically terminate one (1) year from the date the date first written above. Either Party may terminate this Agreement at any time by written notice to the other. Notwithstanding the termination of this Agreement, all of Recipient's nondisclosure obligations pursuant to this Agreement shall survive with respect to any Confidential Information received prior to such expiration or termination.

10. Except upon mutual written agreement, or as may be required by law, neither Party shall in any way or in any form disclose the existence or terms of this Agreement, the discussions that gave rise to this Agreement or the fact that there have been, or will be, discussions or negotiations covered by this Agreement.

11. The Parties acknowledge that Confidential Information is unique and valuable, and that disclosure in breach of this Agreement will result in irreparable injury to Owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages, which shall include, but not be limited to court costs and attorney fees.

12. Neither Party shall assign any of its rights or obligations hereunder without the prior, written consent of the other Party, which consent shall not be unreasonably withheld.

13. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

14. This Agreement: (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) shall be governed and construed in accordance with the laws of Israel without regard to its choice of law provisions.

15. Any legal proceedings arising under this Agreement shall be instituted only in the courts of Tel Aviv.

16. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_