MUTUAL NON-DISCLOSURE AGREEMENT (Customers)

This Confidentiality Agreement (the “**Agreement**”) is entered into on this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Effective Date**”), by and between **[Name of Company]** a company with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**[Name of Company]**”); and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “**Company**”). **[Name of Company]** and Company shall hereinafter be referred to as the “**Parties**”.

**WHEREAS**, either Party may disclose (the “**Disclosing Party**”), from time to time, Confidential Information (as such term is defined hereunder), to the other party (the “**Receiving Party**”), pertaining to their respective activities, whether financial, technological or other, for **Company**'s evaluation of a possible business engagement with **[Name of Company]** in connection with **[Name of Company]**products and/or services (“**Purpose**”), and other information deemed by either party as being Confidential Information; and

**WHEREAS**, the Parties would like to protect the confidentiality of, maintain their respective rights in, and prevent the unauthorized use and disclosure of such Confidential Information.

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

1. **Confidential Information**. The Parties agree that all information disclosed by the Disclosing Party to the Receiving Party, whether in oral form, visual form or in writing, including but not limited to, all specifications, formulas, prototypes, computer programs and any and all records, data, ideas, methods, techniques, processes and projections, plans, marketing information, materials, financial statements, memoranda, analyses, notes, legal documents, and other data and information (in whatever form), as well as improvements, patents (whether pending or duly registered) and any know-how related thereto, relating to the Disclosing Party and information learned by the Receiving Party from the Disclosing Party through the inspection of the Disclosing Party’s property, that relates to Disclosing Party’s products, designs, business plans, business opportunities, finances, research, development, know-how, personnel or third-party confidential information, the terms and conditions of this Agreement, all of which will be considered and referred to collectively in this Agreement as “**Confidential Information**”.
2. **Exclusions to Confidential Information**. Confidential Information shall not include information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of Receiving Party; (ii) the Receiving Party can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the Disclosing Party; (iii) Receiving Party rightfully obtains from a third party who has the right to transfer or disclose it, without any restriction of confidentiality; or (iv) the Receiving Party can demonstrate in its records to have independently developed, without breach of this Agreement and/or any use of the Confidential Information. Notwithstanding the above, Confidential Information may be disclosed pursuant to the order or requirement of a court, administrative agency or other governmental body; provided, however, that to the extent legally permissible, the Receiving Party shall make the best effort to provide prompt written notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.
3. **Non-disclosure and Non-use of Confidential Information**. The Receiving Party agrees to accept and use Confidential Information solely for the Purpose. The Receiving Party will not disclose, publish or disseminate Confidential Information to a third party other than those of its and its affiliates, employees and consultants (“Representatives”) on a need to know basis who have a signed confidentiality agreement with the Receiving Party (or are bound by professional obligations of confidentiality) with terms and conditions no less protective of the Confidential Information than the terms under this Agreement, and further agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication or dissemination of Confidential Information, ensure that such Receiving Party’s Representatives perform the duties and obligations hereunder and the Receiving Party shall remain responsible at all times for any acts and/or omissions of its Representatives with respect to the Disclosing Party’s Confidential Information. The Receiving Party agrees not to use Confidential Information for any third party’s benefit without the prior written approval of an authorized representative of the Disclosing Party in each instance. In performing its duties and obligations hereunder, the Receiving Party agrees to use at least the same degree of care as it does with respect to its own confidential information of like importance but, in any event, at least reasonable care. Further, other than for the evaluation or performance of the Purpose, the Receiving Party agrees that it shall not make any copies of the Confidential Information on any type of media, without the prior express written permission of the authorized representative of the Disclosing Party. In the event that the Disclosing Party files a patent on all or a portion of the Confidential Information disclosed by the Disclosing Party hereunder, such disclosure shall not be deemed a publication of such information.
4. **Ownership of Confidential Information**. All Confidential Information, and any derivatives thereof is and shall remain the property of the Disclosing Party, and no license or other rights to Confidential Information is granted or implied hereby to have been granted to the Receiving Party, now or in the future.
5. **No Warranty**. THE CONFIDENTIAL INFORMATION AND ANY OTHER INFORMATION IS PROVIDED BY THE DISCLOSING PARTY “AS IS”, WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS, OPERABILITY, USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON INFRINGEMENT.
6. **Term**. This Agreement shall govern the communications relating to Confidential Information between the Parties during the period commencing on the Effective Date, until the earlier of: (a) terminated by either Party upon a thirty (30) day written notice to the other Party; or (b) expiration of this Agreement upon the Parties entering into binding legal agreement governing their relationship, which contains confidentiality provisions. The obligations set forth in this Agreement shall bind the Parties for a period of five (5) years from the date of termination or expiration of this Agreement; however, the obligations with respect to Confidential Information that is a trade secret shall bind the parties for as long as such remains a trade secret.
7. **Return of Confidential Information**. Upon written request of the Disclosing Party, the Receiving Party shall: (i) return to the Disclosing Party any information disclosed in any tangible form, and all copies thereof (on whatever physical, electronic or other media such information may be stored) containing any of the Confidential Information, if such Confidential Information is stored in electronic form, it is to be promptly deleted; and (ii) provide a confirmation, in writing, executed by an appropriate officer of the Receiving Party, that it has retained no copies of the Confidential Information on any media and that it has retained no notes or other embodiments of the information contained in the Confidential Information; however, each Party shall be able to retain such copies in accordance with its electronic back-up and archival procedures and as required under applicable law provided that the obligations set forth herein regarding confidentiality and use of Confidential Information shall survive for as long as is retained.
8. **No Obligation**. Neither the execution of this Agreement or the exchange of Confidential Information shall be deemed an undertaking or commitment for either party to enter into a commercial transaction with the other Party.
9. **Equitable Relief**. The Receiving Party hereby acknowledges that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the Disclosing Party that may be difficult to ascertain. Accordingly, the Receiving Party agrees that the Disclosing Party, in addition to any other right or remedy that it may have available to it at law or in equity, will have the right to seek immediate injunctive relief to enforce obligations under this Agreement without the necessity of proving actual damages and without the necessity of posting bond or making any undertaking in connection therewith.
10. **Governing Law**. This Agreement shall be governed and construed solely in accordance with the laws of Israel without giving effect to conflicts of law principles thereof, and only the courts in Tel-Aviv, Israel, shall have jurisdiction in any conflict or dispute arising out of this Agreement, except for the right of the Disclosing Party to apply to any court of a competent jurisdiction, as set forth in Section ‎9.
11. **Entire Agreement**. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein for the Purpose and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may not be amended except by the written agreement signed by authorized representatives of both Parties.
12. **Severability**. In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and further agree to substitute for such invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision.
13. **No Waiver**. Any failure by either Party to enforce strict performance by the other Party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement.
14. **Assignment**. This Agreement shall not be assignable by either Party without the prior written consent of the other Party; provided however, that a Party may assign this Agreement to its affiliates and/or successor in interest as a result of a merger or acquisition of all or substantially all of a Party’s assets or voting rights and any purported assignment not permitted hereunder shall be construed null and void.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives.

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **[Name of Company]** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Company: |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |