

SERIES A PREFERRED SHARE PURCHASE AGREEMENT

THIS SERIES A PREFERRED SHARE PURCHASE AGREEMENT (this "**Agreement**") made as of the [___] day of [____], 200[___], by and among [_____] Ltd., an Israeli company (the "**Company**"), [_____] and [_____] (each a "**Founder**" and, collectively, the "**Founders**")¹, and the purchasers identified in **Schedule 1** attached hereto (each a "**Purchaser**" and collectively the "**Purchasers**").

WITNESSETH:

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company to raise additional capital by means of the issuance of up to [_____] of the Company's Series A Preferred Shares, nominal value NIS [___] each (the "**Preferred A Shares**" or the "**Shares**"), on the terms and conditions more fully set forth in this Agreement; and

WHEREAS, the Purchasers desire to invest in the Company pursuant to the terms and conditions more fully set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. **Issue and Allotment of Shares.**

Subject to the terms and conditions hereof, at the Closing (as defined below), the Company shall issue and allot to the Purchasers, and the Purchasers shall purchase from the Company, severally and not jointly, an aggregate of up to [_____] of the Company's Preferred A Shares, at a price per Share of US\$ ____ (the "**Price Per Share**") and for an aggregate purchase price of US \$ _____ (the "**Investment Amount**"), Each Purchaser shall invest that portion of the Investment Amount and shall purchase that number of Preferred A Shares as set forth opposite such Purchaser's name in **Schedule 1**.

The Company represents, warrants and undertakes that the Preferred A Shares issued to the Purchasers hereunder shall constitute in the aggregate, following such issuance, ____% of the issued and paid-up share capital of the Company on a fully diluted as-converted basis (i.e. after giving effect to the issuance in full of all the outstanding options, warrants, convertible securities and other rights to securities in the Company, including without limitation the issuance of all the Ordinary Shares (as defined below), issuable under the Pool (as defined below)) ("**Fully Diluted Basis**"), as reflected in the Capitalization Table (as defined below).

2. **Closing of Issue and Allotment.**

2.1. **Closing.** Provided that all conditions set forth in Section _ below have been met and fulfilled or waived as provided therein, the issue and allotment of the Shares, the purchase thereof by the Purchasers and the registration of the Shares in the names of the

¹ In early rounds of financing investors often want the Founders to stand behind some or all of the Company's representations and warranties. The Founders usually resist this. It is not common, however, to require Founders' representations in subsequent rounds.

Purchasers in the share register of the Company shall take place at a closing² (the "**Closing**") [to be held at the offices of [____], located at [____], [____]/[remotely via the exchange of documents and signatures] at [____] local time on the [____] business day following the date of this Agreement, or such other date, time and place as the Company and the Purchasers shall mutually agree.³

2.2. **Transactions at the Closing.**⁴ At the Closing, the following transactions shall occur, which transactions shall be deemed to take place simultaneously and, unless the Purchasers have waived, in writing, the occurrence or completion of any such transaction or delivery of any document,⁵ no transaction shall be deemed to have been completed or any document delivered until all such transactions have been completed and all required documents delivered:

2.2.1. The Company shall issue the Preferred A Shares to the Purchasers, as provided in Section 2.1, and deliver to the Purchasers the following documents:

(a) True and correct copies of resolutions of the Company's shareholders, in the form attached hereto as Schedule 2.2.1(a)A, by which the Articles of the Company were replaced with the Amended and Restated Articles, attached hereto as Schedule 2.2.1(a)B (the "**Amended Articles**") together with a duly completed notice of such changes to the Israeli Registrar of Companies (and all of the foregoing, immediately following the Closing, to be duly stamped to indicate filing with the Israeli Registrar of Companies);

(b) True and correct copies of resolutions of the Company's Board of Directors issuing and allotting the Shares to the Purchasers against payment of the purchase price therefor [reserving [____] Ordinary Shares, constituting up to [____] percent ([____]%) of the Company's outstanding share capital on a fully diluted basis (as of immediately following the Closing) for the purpose of granting options to purchase Ordinary Shares to employees, directors and consultants of the Company (the "**Pool**") and effecting a change in the signatory rights of the Company] - all in the forms attached hereto as Schedule 2.2.1(b);

(c) Validly executed share certificates covering the Shares, issued in the names of the respective Purchasers, in the form attached hereto as Schedule 2.2.1(c);

² Some transactions provide for a milestone closing (if the Company is required to satisfy certain milestones before an additional investment is made) or a deferred closing (if the Company is to be given additional time to find additional investors who will invest on the same terms and conditions).

³ In certain transactions the Share Purchase Agreement is signed before the Closing, and the Company then convenes its shareholders meeting and fulfills its other closing conditions; and in certain transactions the signing and closing occur simultaneously. The later is possible if no third-party consents are required or have already been obtained by the time of signing. In addition, in some transactions the investors prefer to make payments in more than one installment. When this is the case, issues to be discussed include whether all shares are issued at the initial closing (or shares are issued as they are paid for) and what happens if an investor defaults on any one of the payments.

⁴ When the Agreement provides for a milestone closing or deferred closing, provision must be made for which of the closing conditions will apply at the milestone closing or deferred closing.

⁵ In transactions involving a group of investors it might make sense to have the waiver of any such conditions subject to the consent of a percentage of the investors.

(d) A certificate duly executed by Company's chief executive officer, dated as of the date of the Closing, in the form attached hereto as Schedule 2.2.1(d) (the "**Compliance Certificate**");⁶

(e) An opinion of [_____], counsel to the Company, in the form attached hereto as Schedule 2.2.1(e) (the "**Opinion**") and dated as of the date of the Closing;

(f) Director indemnification agreements duly executed and approved by the Company, in the form attached hereto as Schedule 2.2.1(f);

[(g) Copies of duly executed Employment Agreements together with executed Proprietary Information and Assignment Agreements between the Company and each of the Founders and the employees identified in Schedule 2.2.1(g)A in the forms attached hereto as Schedule 2.2.1(g)B;

[(h) Share Repurchase Agreements, executed by and between the Company and each Founder (the "**Repurchase Agreements**"), in the form attached hereto as Schedule 2.2.1(h);⁷

[(i) A duly executed Management Rights letter to [_____], in the form attached hereto as Schedule 2.2.1(i);⁸

[(j) A copy of valid and paid-up directors and officers indemnity insurance for acts and omissions of each of the Company's directors and officers in the amount of at least [___] million US Dollars (\$[_____]) from financially sound and reputable insurers reasonably acceptable to the Purchasers;⁹ and

[(k) Duly executed waivers of any unexercised rights of preemption, or participation that the shareholders of the Company may have in connection with the issuance of the Shares, in the form attached hereto as Schedule 2.2.1(k) (the "**Shareholders' Waiver**") or evidence to the reasonable satisfaction of the Purchasers that the period by which shareholders of the Company have to exercise such rights of preemption or participation in connection with the issuance of the Shares has lapsed.]¹⁰

2.2.2. The Company shall register the allotment of the Shares to the Purchasers in the respective numbers indicated in Schedule 1 opposite the names of the respective Purchasers in the share register of the Company and shall deliver a certified copy thereof to the Purchasers.

⁶ The purpose of the compliance certificate is for a senior executive to confirm in the name of the Company that the Company's representations and warranties remain true and correct as of the Closing and that all covenants to be fulfilled by the Company before the Closing have been fulfilled. When execution of the Share Purchase Agreement and the Closing occur simultaneously, there is no need for a compliance certificate.

⁷ Founder employment agreements and repurchase agreements are often included in early rounds of financing and typically are not needed in later rounds.

⁸ Certain venture capital funds, due to the identities of some of their limited partners which are subject to the US Employee Retirement Security Act of 1974 ("ERISA"), are required to qualify as a "venture capital operating company" under ERISA. In order to obtain management rights, the funds are required to receive management rights letters from their portfolio companies.

⁹ Occasionally the Company's obligation to obtain a D&O insurance is a post-closing covenant and not a closing condition.

¹⁰ In a later round of financing, when there are existing anti dilution rights holders that are required to waive their anti-dilution rights, the waivers will address this right as well.

2.2.3. Each Purchaser shall cause the transfer to the Company of its portion of the purchase price for the Shares being issued to it in the respective amounts indicated in Schedule 1 opposite the name of such Purchaser, by wire transfer, banker's check, or such other form of payment as is mutually agreed by the Company and the Purchasers.

2.2.4. The Company and the Purchasers shall execute and deliver the Investors' Rights Agreement substantially in the form set forth as Schedule 2.2.4 (the "**Investors' Rights Agreement**").

2.2.5. [The Purchasers entitled to appoint members to the Company's Board of Directors, as the case may be, pursuant to the Amended Articles, shall execute and deliver written notices to the Company for the appointment of such directors, in the form attached hereto as Schedule 2.2.5(i).]

3. **Representations and Warranties¹¹ of the Company [and the Founders]¹²**. Except as may be expressly set forth in the Disclosure Schedule delivered in connection herewith and attached hereto as Annex 3, which exceptions shall be deemed to be representations and warranties as if made hereunder when read in conjunction with the applicable section, the Company[, and, with respect to Sections [_____] only, the Founders, severally and not jointly,] hereby represent and warrant to the Purchasers, and acknowledge that the Purchasers are entering into this Agreement in reliance thereon, as follows:

3.1. **Organization**. The Company is duly organized and validly existing under the laws of the State of Israel and has full corporate power and authority to own, lease and operate its properties and assets and to conduct its business as now being conducted and as currently proposed to be conducted. The Company has all licenses, permits, franchises and any other similar authority required for the conduct of its business as is now being conducted by it. All such licenses, permits, franchises or any other similar authority are valid and in effect, and the Company is not in default under any of them.

3.2. **Authority**. The Company has all requisite corporate power and authority to execute and deliver this Agreement, the Investors' Rights Agreement and other agreement and/or instrument the execution and delivery of which by the Company is contemplated hereby or which are ancillary hereto (all together, the "**Ancillary Agreements**") and to consummate the transactions contemplated hereby and thereby.

3.3. **Share Capital, Valid Issuance of Preferred Shares**. The registered share capital of the Company as of the Closing shall be NIS [_____] divided into:

(a) [_____] Ordinary Shares, nominal value NIS [___] each (the "**Ordinary shares**"), of which [_____] are issued and outstanding immediately prior to the Closing, and immediately prior to the Closing [_____] Ordinary Shares shall be reserved for issuance upon the exercise of employee options; and

¹¹ The representations and warranties included herein are typical for seed financings. Investors in follow-on financings may request additional representations and warranties, such as insurance etc.

¹² As noted above, Founders' representations are typically highly negotiated. When Founders do give representations, in some deals they will give only specific representations and the extent of their liability for any misrepresentation is limited (often to their shares in the Company and any proceeds therefrom).

(b) [] Preferred A Shares, nominal value NIS [] each (the “Preferred Shares”), of which none are issued and outstanding immediately prior to the Closing.

The capitalization table set forth in **Schedule 3.2** to the Disclosure Schedules (the “**Capitalization Table**”) sets forth the Company’s issued and paid-up share capital, the beneficial and registered holders thereof, and their respective percentage holdings in the Company - all as of the date hereof and immediately prior to and after giving effect to the Closing. **Schedule 3.2** to the Disclosure Schedules reflects also a complete and correct capitalization table on a Fully Diluted Basis as of the date hereof and immediately prior to and after giving effect to the Closing listing the persons and entities entitled to any option, warrant or any other security convertible to shares of the Company.

Except for (a) options, warrants and other convertible securities noted in the Capitalization Table, (b) the conversion privileges of the Preferred Shares, (c) the pre-emptive rights and rights of first refusal provided in the Investors' Rights Agreement and the Amended Articles, and (d) transactions contemplated by this Agreement, there are no preemptive rights, rights of first refusal, outstanding convertible securities, warrants, options or other rights to subscribe for, purchase or acquire from the Company any share capital of the Company or securities convertible into share capital of the Company and there are not any contracts or binding commitments providing for the issuance of, or the granting of rights to acquire, any share capital of the Company or under which the Company is or may become obligated to issue any of its securities.

The Company is not subject to any outstanding or conditioned repurchase obligation of any of the securities issued by it and no security issued by the Company is redeemable by its terms.

All issued and outstanding share capital of the Company has been duly authorized, and is validly issued and outstanding and fully paid and nonassessable.

The Shares, when issued and allotted in accordance with this Agreement, will be duly authorized, validly issued, fully paid, nonassessable, free of any preemptive rights, will have the rights, preferences, privileges, and restrictions set forth in the Amended Articles, will be free and clear of any liens, claims, encumbrances or third party rights of any kind (except as specified in the Amended Articles and the Investors' Rights Agreement) and duly registered in the name of each Purchaser in the Company's share register. The Ordinary Shares issuable upon conversion of the Shares, upon conversion in accordance with the terms of the Amended Articles, shall be duly and validly issued, fully paid, non-assessable, free of any preemptive rights, will have the rights, preferences, privileges and restrictions set forth in the Amended Articles (as may be amended from time to time in accordance with its terms).

The issuance of the Shares hereunder will not trigger any anti-dilution or pre-emptive rights which have not been either fully reflected in the Capitalization Table or waived. The issuance of the Shares hereunder will not trigger acceleration or other changes in the vesting provisions or other terms of any options, warrants or other securities of the Company.

The Company is not under any obligation to register for trading on any securities exchange any of its currently outstanding securities or any of its securities which may hereafter be issued.

Since its incorporation, there has been no declaration or payment by the Company of dividends, or any distribution by the Company of any assets of any kind to any of its shareholders in redemption of or as the purchase price for any of the Company's securities.

3.4. **Ownership of Shares.** The individuals identified in **Schedule 3.2** to the Disclosure Schedules as the shareholders of the Company are the lawful record owners, and to the knowledge of the Company [and the Founders] the lawful beneficial owners, of all of the issued and outstanding shares capital of the Company and of all rights thereto, and, to the knowledge of the Company [and the Founders], except as set forth in such schedules, free and clear of all liens, claims, charges, encumbrances, restrictions, rights, options to purchase, proxies, voting trust and other voting agreements, calls or commitments of every kind, and none of the said individuals owns any other shares, options or other rights to subscribe for, purchase or acquire shares of the Company from the Company or, to the knowledge of the Company [and the Founders], from each other.

3.5. **Subsidiaries.** The Company does not own or control, directly or indirectly, any interest in any other of any other corporation, association or business entity.¹³

3.6. **Directors, Officers.** As of immediately prior to the Closing, the directors of the Company are [____], [____] and [____]. Except for the Amended Articles, the Company has no agreement, obligation or commitment with respect to the election of any individual or individuals to the Board and to the Company's knowledge there is no voting agreement or other arrangement among the Company's shareholders. The officers of the Company are [____]. All agreements, commitments and understandings, whether written or oral, with respect to any compensation to be provided to any of the Company's directors or officers have been fully disclosed in writing to the Purchasers.

3.7. **Financial Statements.** The Company has delivered to the Purchasers copies of its audited, consolidated financial statements as of [____], [____] [and unaudited but reviewed financial interim statements as of _____] (collectively, the "**Financial Statements**"). The Financial Statements are true and correct in all material respects, are in accordance with the books and records of the Company and have been prepared in accordance with United States generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods indicated and with each other [except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles]. The Financial Statements fairly present in all material respects the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no liabilities or obligations, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to [____], which in the aggregate do not exceed \$[____], (ii) obligations under contracts and commitments incurred in the ordinary course of business and (iii) liabilities and obligations of a type or

¹³ If the Company has any subsidiaries it will be asked to fully disclose them in which case language should be added to Section 3.4 with representation with respect to the subsidiaries of the Company regarding the organization of each such subsidiary, and further references to subsidiaries should be added throughout Section 3, where applicable.

nature not required under generally accepted accounting principles to be reflected in the Financial Statements.¹⁴

3.8. **Absence of Changes.**¹⁵ Since _____, except as set forth in **Schedule 3.7.** there has not been:

(a) any material change in the assets, liabilities, financial condition or operating results of the Company;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, liabilities, financial condition, operating results or business of the Company;

(c) any waiver or compromise by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any material lien, material claim or material encumbrance or payment of any material obligation by the Company, except in the ordinary course of business and that is not individually or in the aggregate adverse to the assets, properties, liabilities, financial condition, operating results or business of the Company ;

(e) any change or amendment to a material contract or material arrangement by which the Company or any of its respective assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any key employee of the Company;

(g) any loans or guarantees made by the Company to or for the benefit of its employees, officers, or directors other than travel advances made in the ordinary course of business;

(h) any sale, transfer or lease of, except in the ordinary course of business, or mortgage or pledge of or imposition of lien on, any of the Company's assets (including intangible assets);

(i) any change in the accounting methods or accounting principles or practices employed by the Company;

(j) any other event or condition of any character that would materially adversely affect the assets, properties, financial condition, operating results or business of the Company as currently being conducted or as currently proposed to be conducted, which would have

¹⁴ Many early-stage companies have not prepared financial statements at the time of their first round of financing. In such an event, the Company typically provides a representation that its aggregate amount of debts and liabilities do not exceed a certain amount. In very early rounds, this representation is sometimes limited only to a confirmation that the Company has conducted no business operations and has no outstanding obligations or debts.

¹⁵ This representation applies only if the Company has prepared financial statements. This representation aims to "bring down" the financial statements from the period covered thereby, accordingly the effective date should be the date of the most recent financial statements.

been reflected in the Financial Statements had the Financial Statements been dated as of the date hereof; or

(k) any arrangement or commitment by the Company to do any of the things described in this Section 3.7.

3.9. **Authorization; Approvals.** All corporate action on the part of the Company necessary for the authorization, execution and delivery of this Agreement, the Investors' Rights Agreement and the other Ancillary Agreements, and performance of all of the Company's obligations hereunder and thereunder and for the authorization, issuance, and sale of the Shares being sold under this Agreement and of the shares of Ordinary Shares upon conversion of the Shares has been (or will be) taken prior to the Closing. This Agreement, the Investors' Rights Agreement and the other Ancillary Agreements, when executed and delivered by or on behalf of the Company, shall constitute the valid and legally binding obligations of the Company, legally enforceable against the Company in accordance with their respective terms subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. No consent, approval, order, license, permit, action by, or authorization of or designation, declaration, or filing with any local or foreign governmental authority on the part of the Company is required that has not been, or will not have been, obtained by the Company prior to the Closing in connection with the valid execution, delivery and performance of this Agreement, the Investors' Rights Agreement and the other Ancillary Agreements, including, without limitation, in connection with the issuance and allotment of the Shares, except for the filing of the Amended Articles and other post-closing filing of notices with the Israeli Registrar of Companies.

3.10. **Compliance with Other Instruments.** The Company is not in violation or default (a) under its Articles or other governing instruments, or under any note, indenture, mortgage, agreement, contract, or instrument to which the Company is a party or by which it or any of its property is bound or (b) with respect to any law, statute, ordinance, regulation, order, writ, injunction, decree, or judgment of any court or any governmental authority, domestic or foreign, which default, in any such case, would materially and adversely affect the Company's business, condition (financial or otherwise), affairs, operations or assets].

3.11. **No Breach.** Neither the execution and delivery of this Agreement, the Investors' Rights Agreement and the other Ancillary Agreements nor compliance by the Company with the terms and provisions hereof or thereof, will conflict with, or result in a breach or violation of, any of the terms, conditions and provisions of: (i) the Company's Articles or other governing instruments of the Company, (ii) any judgment, order, writ, injunction, decree, or ruling of any court or governmental authority, domestic or foreign to which the Company is subject, (iii) any note, indenture, mortgage, agreement, contract, or instrument to which the Company is a party or by which it or any of its property is bound, or (iv) applicable law, statute, ordinance or regulation. Such execution, delivery and compliance will not (a) give to others any rights, including rights of termination, cancellation or acceleration, in or with respect to any agreement, contract or commitment referred to in this paragraph, or to any of the properties of the Company; (b) the suspension, revocation, impairment, forfeiture, or non-renewal of any permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its properties; or (c) otherwise require the consent or approval of any person, which consent or approval has not heretofore been obtained.

3.12. **Records.** The minute books of the Company which have been provided to the Purchasers reflect all resolutions that have been passed, enacted, consented to or adopted by the directors (or any committee thereof) or shareholders of the Company. The corporate records of the Company have been maintained in accordance with all applicable statutory requirements and are complete and accurate in all [material] respects.

3.13. **Ownership of Assets, Absence of Liens.** The Company does not currently lease any property with the exception of the Company's office space located at _____, Israel, a copy of the lease for which has been provided to the Purchasers. The Company does not own any material tangible assets other than those set forth in **Schedule 3.11** hereto. The Company has good and valid title to, and is the sole and exclusive owner of, all rights, title and interest in and to all of its assets and properties - real and personal, tangible and intangible, fixed or movable - free from all liens (except for statutory tax liens), charges, encumbrances, or other third-party rights or claims of any kind or nature whatsoever. With respect to the property and assets it leases, the Company is in compliance with such leases and, to its knowledge, holds a valid leasehold interest free of any liens (except for statutory tax liens), charges, encumbrances or other third-party rights or claims other than those of the lessors of such property or assets.

3.14. **Intellectual Property.** The Company has an unrestricted and exclusive ownership right and title, , or [believes it] can acquire on commercially reasonable terms sufficient legal rights to all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade dress, logos, service marks, copyrights, trade secrets, licenses, domain names, URL's, mask works, technical data, information and other intangible assets, know-how, technology, processes, applications, algorithms, computer programs and software, works of authorship, designs and inventions (whether or not reduced to practice) and any and all intellectual and proprietary rights, that are used by the Company in, being developed by the Company for, or as are necessary to the conduct of the Company's business as now conducted and as presently proposed to be conducted ("Company Intellectual Property") without any known conflict with, or infringement of, the rights of others. To the Company's [and the Founders] knowledge, no product or service marketed or sold (or proposed to be marketed or sold) by the Company violates or will violate any license or infringes or will infringe any intellectual property rights of any other party. The Company has not transferred, disposed of, pledged or otherwise granted to any third party any right, option or license, express or implied, with respect to the Company Intellectual Property.

Other than with respect to commercially available software products under standard end-user object code license agreements, the Company is not obligated to make payments by way of royalties, fees or otherwise to an owner or licensee of patents, trademarks, service marks, trade names, copyrights, trade secrets, or other intellectual and/or proprietary rights with respect to the use thereof, in connection with the conduct of the Company's business as conducted and as contemplated to be conducted. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, trade names, copyrights, trade secrets, mask works or other proprietary rights or processes of any other Person. Neither the Company nor any of the Founders has knowledge of any third party (including any employee or former employee of the Company) interfering with, infringing upon, misappropriating, violating or using without authorization any of the Company Intellectual Property. The Company has obtained and possesses valid licenses to use all of the software programs

present on the computers and other software-enabled electronic devices that it owns or leases or that it has otherwise provided to its employees for their use in connection with the Company's business. Any and all of the Company Intellectual Property, was not invented, discovered, created, conceived or developed within the framework of or in relation to employment by former employers of the Founders or within the framework of or in relation to their engagement by any other third party. Each employee, officer, independent contractor and consultant of the Company, whose engagement with the Company is related in any manner to the development or otherwise to any contribution to proprietary information, know-how, technology, inventions, discoveries, developments, concepts and/or ideas, has executed a proprietary information and inventions agreement, pursuant to which all title, rights and interest in and with respect to any information, know-how, technology and any and all intellectual and proprietary rights in and to any and all inventions, discoveries, developments, concepts and ideas which each such employee, contractor or consultant shall develop, discover, invent, create or conceive in the course of their engagement by the Company (and, with respect to employees, also such that are related to the business of the Company as now conducted and as contemplated to be conducted), is fully vested with the Company and is the sole property of the Company. The Company has not embedded any open source, copyleft or community source code in any of its products generally available or in development, including but not limited to any libraries or code licensed under any General Public License, Lesser General Public License or similar license arrangement. The Company and the Founders have taken all necessary security measures to protect and maintain the secrecy, confidentiality, value of, and the Company's ownership rights in and to the Company Intellectual Property. For purposes of this Section 3.14, **שגיאה! מקור ההפניה לא נמצא.** the Company shall be deemed to have knowledge of a patent right if the Company has actual knowledge of the patent right or would be found to be on notice of such patent right as determined by reference to United States patent laws.

3.15. **Taxes.** The Company has not made any elections under applicable laws or regulations (other than elections that related solely to methods of accounting, depreciation or amortization) that would have an adverse effect on the Company, its financial condition, its business as presently conducted or proposed to be conducted or any of its properties or assets. The Company is not currently liable for any tax (whether income tax, capital gains tax, or otherwise).

3.16. **Contracts.** Schedule 3.16 to the Disclosure Schedules contains a true and complete list of all [material] contracts, agreements and commitments, to which the Company is a party or by which its property is bound (each such instrument a "Contract" and together "Contracts"). Each of such contracts and agreements is in full force and effect, and neither the Company nor, to the knowledge of the Company [and the Founders], any other party thereto is in breach thereof and the Company has not received any notice that any other party or parties to any Contract intend to exercise any right of cancellation, termination or non-renewal thereof. True and correct copies of all such Contracts have been delivered to the Purchasers and any oral Contracts have been fully described to the Purchasers in writing.

3.17. **Litigation.** No action, suit, proceeding or governmental inquiry or investigation is pending or, to the knowledge of the Company [and the Founders], threatened against the Company or any of their officers, directors, or employees (in their capacity as such), [or against the Founders], or any such which are related in any way to the Company, its business, assets or properties, before any court, arbitration board or tribunal or administrative or other governmental agency, nor to the knowledge of the Company [and the Founders] is

there is any basis for the foregoing. The foregoing includes, without limitation, actions or suits pending or, to their knowledge, threatened involving the prior employment of any of the Founders and other Company's employees, their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. Neither the Company nor the Founders are a party, or, subject to the provisions of any order, writ, injunction, judgment or decree of any court or governmental agency or instrumentality. There is no action, suit, proceeding or investigation by the Company [or any Founder] currently pending or that the Company [or any Founder] intends to initiate.

3.18. **No Public Offer.** Neither the Company nor anyone acting on its behalf has offered securities of the Company for issuance or sale to, or solicited any offer to acquire any of the same from, anyone so as to make issuance and sale of the Shares hereunder not exempt from the registration requirements of the Securities Act of 1933, as amended or the Israeli Securities Law, 1968.

3.19. **Interested Party Transactions.** Except as forth in **Seclude 3.19** to the Disclosure Schedule, no officer, director or shareholder of the Company, or any affiliate of any such person or entity or the Company, has or has had, either directly or indirectly, (a) an interest in any person or entity which (i) furnishes or sells services or products which are furnished or sold or are proposed to be furnished or sold by the Company, or (ii) purchases from or sells or furnishes to the Company any goods or services, or (b) a beneficial interest in any contract or agreement to which the Company is a party or by which it may be bound or affected. Except as forth in **Schedule 3.19** to the Disclosure Schedule, there are no existing agreements, arrangements or proposed transactions between the Company and any officer, director, or shareholder of the Company, or any affiliate or associate of any such person. No employee, shareholder, officer, or director of the Company is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them (other than in connection with employee compensation and benefits pursuant to written employment or engagement agreements referenced elsewhere herein) .

3.20. **Employees.**

3.20.1. The Company does not have any employment or engagement agreement with any officer or employee or any other consultant or person which is not terminable by it at will without liability upon thirty (30) days prior notice. The Company has complied with the terms and conditions of each employment or engagement agreement with its employees, consultants and independent contractors and with all applicable employment laws. All of the Company's employees, consultants and independent contractors are parties to a written employment or engagement agreement; true and correct copies of such agreements have been delivered to the Purchasers. The Company has paid in full to all its present or former employees, consultants and independent contractors all wages, salaries, commissions, bonuses, benefits and other compensation due and payable to the foregoing on or prior to the date of the Closing, and there is no dispute pending between the Company or any one of the foregoing. In addition, the Company has paid in full (or has made sufficient reserves in the Financial Statements) all of the payments and obligations due or payable with respect to its employees, including, but not limited to, national insurance, social security payments, income tax withholdings, pension, payments to managers' insurance and educational funds, severance pay, sick pay and vacation pay. Except as set forth on **Schedule 3.20** to the Disclosure Schedules, the Company does not have any employment or consulting contracts, deferred

compensation agreements or bonus, incentive, profit-sharing, or pension plans currently in force and effect, or any understanding with respect to any of the foregoing.

3.20.2. Each Founder hereby certifies that he has duly terminated his employment with his former employers and that the fulfillment of any of his obligations to the Company, will not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument to which such Founder is, or was, a party and that such Founder has not and will not use any proprietary rights or confidential information or trade secrets of any former employer(s) or any other third party in connection with the business of the Company.¹⁶

3.21. **Grants, Incentives and Subsidies.** The Company has not received, and has no pending application for any Israeli government grants, incentives or subsidies including, without limitation, (i) Approved Enterprise Status from the Investment Center, (ii) grants from the Fund for the Encouragement of Overseas Marketing, (iii) grants from the Office of the Chief Scientist or (iv) any bi-national or multi-national research and development fund.

3.22. **Brokers.** No agent, broker, investment banker, person or firm acting in a similar capacity on behalf of or under the authority of the Company is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, on account of any action taken by the Company in connection with any of the transactions contemplated under the Agreement.

3.23. **Obligations of Management.** Each officer of the Company is currently devoting one hundred percent (100%) of his or her business time to the conduct of the business of the Company. The Company is not aware of any officer or key employee of the Company planning to work less than full-time at the Company in the future.

3.24. **Full Disclosure.** [To the knowledge of the Company,] neither this Agreement nor any certificate made by the Company or delivered on its behalf hereunder contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading, in view of the circumstances in which they were made.

3.25. **Effectiveness; Survival.** Each representation and warranty herein is deemed to be made on the date of this Agreement and at the Closing, and shall survive and remain in full force and effect after the Closing.¹⁷

It is hereby provided that the Purchasers' investigation with respect to the Company does not adversely affect or in any way derogate from the Purchasers' right to rely on the

¹⁶ 3.18.2 is sometimes provided in early-stage companies in which the Founders are giving representations.

¹⁷ It is common for the Company to try and limit the survivability of its representations and warranties and to limit its liability for the breach of its representations and warranties. In addition, in the event that the Founders provide representations and warranties, it is common for them to try and limit the number of representations and warranties they provide, to limit the survivability of their representations and warranties, to limit their liability for the breach of their representations and warranties, including by limiting the source of recovery solely to the transfer of their shares [and to provide that they cannot be sued personally unless an adequate remedy cannot be obtained from the Company]; all such limitations are typically excluded in the case of fraud.

Company's and the Founders' representations and warranties contained herein and from the Company's and the Founders' liability with respect thereto.

4. **Representations and Warranties of the Purchasers.** Each Purchaser hereby represents and warrants, severally and not jointly, to the Company as follows:

4.1. **Enforceability.** This Agreement and the agreements to be executed by such Purchaser under this Agreement, when executed and delivered by such Purchaser, will constitute valid and legally binding obligation of such Purchaser, legally enforceable against such Purchaser in accordance with their respective terms subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

4.2. **Authorization.** The execution and delivery of this Agreement and the agreements to be executed by such Purchaser under this Agreement and the performance of the obligations of such Purchaser hereunder and thereunder have been duly authorized by all necessary corporate action on the part of the Purchaser.

4.3. **Brokers.** No agent, broker, investment banker, person or firm acting in a similar capacity on behalf of or under the authority of such Purchaser is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, on account of any action taken by such Purchaser in connection with any of the transactions contemplated under this Agreement.

4.4. **Purchase for Own Account.** The Shares to be purchased by such Purchaser will be acquired by it for investment for the Purchaser's own account and not with a view to the distribution or resale thereof; subject, nevertheless, to the condition that the disposition of the property of each Purchaser shall at all times be within its control. It understands that at the present time there is no established market for any of the securities issued by the Company and that there are no assurances that any such market will be created.

4.5. **Accredited Investor.** The Purchaser is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933 as amended.

4.6. **Risk of Loss; Investment Experience; Disclosure of Information.**
Without derogating or limiting the representations and warranties of the Company [and the Founders] set forth in Section 3 above or from the Purchaser's right to rely thereon, the Purchaser further represents and warrants to the Company with respect to its purchase of the Shares as follows:

(a) Such Purchaser confirms that it is aware that the Company has been in the development stage since its inception and that has a short operating history and further understands and is aware that the purchase of shares of the Company involves substantial business risk, should be regarded as highly speculative and may cause it substantial or total loss of its investment.

(b) The Purchaser is able to bear the economic risk of an investment in the Shares and could afford a complete loss of such investment.

(c) The Purchaser confirms that it and its advisers and representatives have had an opportunity to ask questions of, and receive answers from, a person acting on behalf of the Company concerning the investment and regarding the Company, including, without limitation, regarding its business, operations, properties, prospects, technology, plans and financial affairs and has had the opportunity to review the Company's facilities.

(d) The Purchaser has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in a private equity transaction of securities of emerging companies in a similar stage and position as the Company and has evaluated the risk of investing in the Shares.

4.7. **Exculpation Among Purchasers.** The Purchaser acknowledges that it is not relying upon any Person, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. [The Purchaser agrees that neither any Purchaser nor the respective controlling Persons, officers, directors, partners, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore taken or omitted to be taken by any of them in connection with the purchase of the Shares.]

5. **Conditions of Closing of the Purchasers.** The obligations of each Purchaser to purchase Shares and transfer funds at the Closing are subject to the fulfillment at or before the Closing of the following conditions precedent, any one or more of which may be waived in whole or in part by each of the Purchasers with respect to such Purchaser, which waiver shall be at the sole discretion of such Purchaser:¹⁸

5.1. **Representations and Warranties.** The representations and warranties made by the Company [and the Founders] in this Agreement shall have been true and correct when made, and shall be true and correct [in all material respects] as of the Closing as if made on the date of the Closing.¹⁹

5.2. **Covenants.** The Company shall have adopted the Amended Articles as its Articles and all other covenants, agreements, and conditions contained in this Agreement to be performed or complied with by the Company [or the Founders] prior to the Closing shall have been performed or complied with by the Company [or the Founders, as the case may be], prior to or at the Closing.

5.3. **Consents, etc.** The Company shall have secured all permits, consents and authorizations that shall be necessary or required lawfully to consummate this Agreement, the Investors' Rights Agreement and the other Ancillary Agreements and to issue the Shares to be purchased by each Purchaser at the Closing.

5.4. **Delivery of Documents.** All of the documents to be delivered by the Company pursuant to Section 2.2 shall be in a form and substance reasonably satisfactory to the Purchasers and their counsel, and shall have been delivered to the Purchasers. The Investors' Rights Agreement shall have been executed and delivered to the Purchasers by each of the other parties thereto.

¹⁸ In transactions involving a group of investors it might make sense to have the waiver of any such conditions subject to the consent of a percentage of the investors.

¹⁹ This Section is relevant only when signing and closing are not concurrent.

5.5. **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated by this Agreement, the Investors' Rights Agreement and the other Ancillary Agreements, and all documents and instruments incident to such transactions, shall be reasonably satisfactory in substance and form to the Purchasers and their counsel, and the Purchasers and their counsel shall have received all such counterpart originals or certified or other copies of such documents as the Purchasers or their counsel may reasonably request.

5.6. **Due Diligence Review.** The Purchasers' legal, accounting, patent and financial due diligence review of the Company shall have been completed to the reasonable satisfaction of the Purchasers.²⁰

5.7. **Absence of Adverse Changes.** From the date hereof until the Closing, there will have been no material adverse change in the financial or business condition of the Company.²¹

5.8. **Minimum Size of Closing.** The Closing pursuant to this Agreement shall be for a minimum of US \$_____].

6. **Conditions of Closing of the Company.** The Company's obligations to issue and allot the Shares at the Closing are subject to the fulfillment at or before the Closing of the following conditions, any one or more of which may be waived by the Company:

6.1. **Representations and Warranties.** The representations and warranties made by the Purchasers in this Agreement shall have been true and correct when made, and shall be true and correct [in all material respects] as of the Closing as if made on the date of the Closing.²²

6.2. **Covenants.** All covenants, agreements, and conditions contained in this Agreement to be performed or complied with by the Purchasers prior to the Closing shall have been performed or complied with by the Purchasers prior to or at the Closing.

6.3. **Minimum Size of Closing.** The Closing pursuant to this Agreement shall be for a minimum of US \$_____]

7. **Affirmative Covenants.**

7.1. **Use of Proceeds.** The Company will use the proceeds of the issuance and sale of the Shares for working capital and general corporate purposes in accordance with the Company's budget heretofore delivered to the Purchasers, as may be amended from time to time by the Company's Board of Directors [with the affirmative vote or written consent of at least one of the directors appointed by the Purchasers].

²⁰ In transactions involving a simultaneous signing and closing, this provision is irrelevant. Companies usually try to resist including this provision, claiming that its inclusion gives investors the ability to walk away from a deal after signing. Companies claim that the investors should complete their due diligence efforts before signing the agreement.

²¹ In transactions involving a simultaneous signing and closing, this provision is irrelevant.

²² See footnote 20.

7.2. **Key-man Insurance.** The Founders hereby consent and undertake to cooperate with, and take any action and execute any document reasonably required by the Company to enable the Company (at the sole discretion of the Company's Board of Directors) to procure key-man life insurance policies on the lives of each of the Founders in the amount of \$[_____] for each, naming the Company as beneficiary, and shall undertake to keep such policy in full force and effect.]²³

7.3. **Expenses.** The Company shall reimburse the Purchasers at the Closing for the Purchasers' legal fees [, and any financial and IP due diligence and accounting] fees plus out of pocket fees and expenses incurred with respect to transaction set forth in this Agreement; provided, however, that such reimbursement does not exceed \$[_____] plus Value Added Tax.

7.4. **Share Option Plan.** The Company shall, no later than within 60 (sixty) days following the Closing, adopt an incentive share option plan, for allocation of options to purchase Ordinary Shares to employees, consultants and directors of the Company and its subsidiaries, the terms of which shall be reasonably acceptable to the Purchasers and include a 4 year term vesting schedule mechanism with a one year cliff (the "**Share Option Plan**").

7.5. **D&O Insurance.** The Company shall, no later than within 30 (thirty) days following the Closing, obtain from financially sound and reputable insurers a directors' and officers' insurance policy, satisfactory to the Purchasers, with coverage as appropriate for companies of the Company's size and stage of development, which coverage shall in no event be lower than US \$_____;

8. **Miscellaneous**

8.1. **Further Assurances.** Each of the parties hereto shall perform such further acts and execute such further documents as may reasonably be necessary to carry out and give full effect to the provisions of this Agreement and the intentions of the parties as reflected thereby.

8.2. **Governing Law.** This Agreement, its interpretation, validity and breach shall be governed by and construed in accordance with the laws of the State of Israel, without regard to its conflict of laws rules. The parties hereto agree to submit to the exclusive jurisdiction of the Tel-Aviv courts with respect to the breach or interpretation of this Agreement or the enforcement of any and all rights, duties, liabilities, obligations, powers, and other relations between the parties arising under this Agreement.

8.3. **Successors and Assigns; Assignment.** Except as otherwise expressly limited herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

²³ Sometimes the Company's obligation to obtain key-man insurance is a closing condition and not a post-closing covenant.

8.4. **Entire Agreement; Amendment and Waiver.** This Agreement and the Schedules hereto constitute the full and entire understanding and agreement between the parties with regard to the subject matters hereof and thereof and supersede all prior agreements, understandings, promises, representations and warranties made by all or any of the parties hereto with respect to such subject matters. Any term of this Agreement may be amended and the observance of any term hereof may be waived (either prospectively or retroactively and either generally or in a particular instance) only with the written consent of all of the parties to this Agreement.²⁴

8.5. **Notices, etc.** All notices and other communications required or permitted hereunder to be given to a party to this Agreement shall be in writing and shall be faxed, emailed or mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed to such party's address as set forth below or at such other address as the party shall have furnished to each other party in writing in accordance with this provision:

if to the Purchasers: to the addresses set forth in Schedules I

with a copy (which shall not constitute notice) to:

[_____]
[Address]
[Fax No.]

if to the Company: _____.

Facsimile: _____
Email: _____
Attention: _____

with a copy (which shall not constitute notice) to:

[_____]
[Address]
[Email:]
[Fax No.]

[If to the Founders: _____.

Address: _____

Address: _____]

²⁴ If there are numerous investors, it often makes sense to require consent from fewer than all parties to the Agreement for purposes of amendment so that not each of the numerous parties has a veto. Under such circumstances, typically the consent of the Company and the holders of a certain percentage of the Shares purchased is required.

Any notice sent in accordance with this Section 8.5 shall be effective (i) if mailed, five (5) business days after mailing, (ii) if sent by messenger, upon delivery, and (iii) if sent via fax or email, upon transmission and electronic confirmation of receipt or if transmitted and received on a non-business day on the first business day following transmission and electronic confirmation of receipt (provided, however, that any notice of change of address shall only be valid upon receipt).

8.6. **Delays or Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any party upon any breach or default under this Agreement, shall be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

8.7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable under applicable law, then such provision shall be excluded from this Agreement and the remainder of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms; provided, however, that in such event this Agreement shall be interpreted so as to give effect, to the greatest extent consistent with and permitted by applicable law, to the meaning and intention of the excluded provision as determined by such court of competent jurisdiction.

8.8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and enforceable against the parties actually executing such counterpart, and all of which together shall constitute one and the same instrument. Signatures by facsimile or signatures which have been scanned and transmitted by electronic mail shall be deemed valid and binding for all purposes.

8.9. **Captions.** The captions of Sections in this Agreement are intended solely for convenience, and will have no significance in the interpretation of this Agreement.

8.10. **Waiver of Conflicts.** Each party to this Agreement acknowledges that [insert name of Company Counsel], counsel for the Company, has in the past performed and may continue to perform legal services for certain of the Purchasers in matters unrelated to the transactions described in this Agreement, including the representation of such Purchasers in venture capital financings and other matters. Accordingly, each party to this Agreement hereby (a) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; and (b) gives its informed consent to [insert name of Company Counsel]'s representation of certain of the Purchasers in such unrelated matters and to [insert name of Company Counsel]'s representation of the Company in connection with this Agreement and the transactions contemplated hereby.]

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the parties have signed this Series A Share Purchase Agreement as of the date first hereinabove set forth.

[_____]

By: _____

Title: _____

[THE FOUNDERS:

[_____]

[_____]

[Remainder of page intentionally left blank.]

[Signatures page Series A Share Purchase Agreement]

PURCHASERS:

[_____]

[_____]

By: _____
Name:
Title:

By: _____
Name:
Title:

SAMPLE

SCHEDULE 1

THE PURCHASERS

Purchaser	Closing Amount (US\$)	Number of Series A Preferred Shares
[_____] <u>Address:</u>	\$_[_____]	[_____]
[_____] <u>Address:</u>	\$_[_____]	[_____]
Total all:	\$_[_____]	[_____]

DRAFT