

## **COMBINED PRODUCTS LIABILITY AND PROFESSIONAL INDEMNITY POLICY FOR THE SOFTWARE AND HARDWARE INDUSTRY -2010**

Whereas the NAMED INSURED has made to the Insurer a written Proposal bearing the date stated in the Schedule and containing particulars and statements which, together with any other information which may have been supplied, shall be the basis of this contract and shall be considered as incorporated herein,

### **1. INSURING CLAUSE**

The Insurer agrees, **in consideration of the Premium stated in the Schedule and subject to the terms, limitations, exclusions and conditions of this Policy**, to pay on behalf of the INSURED for all sums which the INSURED shall become legally liable to pay as damages and claimants costs and expenses;

#### **INSURING CLAUSE A - PROFESSIONAL INDEMNITY:**

As a result of any CLAIM **first made against the INSURED and notified to the Insurer during the PERIOD OF INSURANCE stated in the Schedule** arising out of a WRONGFUL ACT on the part of the INSURED in or about the conduct of the NAMED INSURED'S PROFESSIONAL SERVICES as part of his Business as specified in the Schedule:

#### **INSURING CLAUSE B - PRODUCTS LIABILITY:**

In respect of any CLAIM for BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS and **first made against the NAMED INSURED and notified to the Insurer during the PERIOD OF INSURANCE stated in the Schedule and arising out of the conduct of the NAMED INSURED'S Business as specified in the Schedule;**

*Where a Retroactive Date is specified in the Schedule this Policy will not respond in respect of any CLAIM otherwise failing for indemnity under this Policy, where the cause of such CLAIM occurred or was alleged to have occurred prior to the Retroactive Date.*

### **2. COSTS AND EXPENSES**

The Insurer also agrees to pay all reasonable costs and expenses incurred in the investigation, defense or settlement of any CLAIM under this Policy.

### **3. LIMIT OF INDEMNITY**

**Provided always that the Insurer's total aggregate liability under this Policy, including any extensions hereto, shall not exceed the Limit of Indemnity specified in the Schedule in respect of all CLAIMS, plus costs and expenses incurred in the investigation, defense or settlement of any CLAIM.**

If payment exceeding the Limit of Indemnity has to be made to dispose of a CLAIM, the liability of the Insurer to pay all costs and expenses in connection therewith shall be limited to reasonable costs above the limit of liability.

*In respect of any CLAIM made within the United States of America and/or Canada and/or territories which come under the jurisdiction of the United States of America and/or Canada including the enforcement by courts of other countries of any judgment originally obtained in any court of the United States of America and/or Canada and/or territories which come under the jurisdiction of the United States of America and/or Canada, than reasonable legal costs and expenses in connection therewith will be in addition to the Limit of Liability, such reasonableness will be measured based on reasonable costs in Israel and in accordance with the Israeli law.*

#### **4. DEDUCTIBLE**

**Provided further that the Insurer shall only be liable for the part of each and every CLAIM (which for the purpose of this clause shall be deemed to include all costs and expenses incurred in the investigation, defense or settlement of any CLAIM) which exceeds the amount of the Deductible stated in the Schedule.**

**If any expenditure is incurred by the Insurer which by virtue of this clause is the responsibility of the NAMED INSURED then such amount shall be reimbursed to the Insurer by the NAMED INSURED forthwith.**

#### **5. TERRITORIAL SCOPE**

**This insurance covers WRONGFUL ACTS committed or CLAIMS made within the territorial limits specified in the schedule.**

#### **6. EXCLUSIONS**

***The Insurer shall not be liable to indemnify the INSURED for any CLAIM***

- a) due to or allegedly due to the INSURED'S failure to perform and/or non compliance with any of the INSURED'S contractual obligations to a third party, unless***
  - the non-performance or alleged non-performance or the non-compliance or alleged non-compliance is due to a WRONGFUL ACT; and***
  - liability in respect of such CLAIM would have attached to the INSURED in the absence of such contractual obligations.***
- b) due to the Insured's performance failure arising out of the conduct of the PROFESSIONAL SERVICES without prior testing and final acceptance by the user. However, this exclusion is not applicable for any non customized provision of the PROFESSIONAL SERVICES***

- c) **arising out of a failure by the INSURED to make an accurate pre-assessment of the cost and/or time of the INSURED performing their PROFESSIONAL SERVICES. However this exclusion does not apply to a delay arising from non compliance with timetables on the part of the INSURED due to a WRONGFUL ACT of the INSURED**
- d) **arising directly or indirectly from BODILY INJURY, sickness, disease or death sustained by any person arising out of and in the course of his/her employment by the INSURED under any contract of employment or apprenticeship, or for any breach of any obligation owed by the INSURED as an employer to any employee,**
- e) **arising directly or indirectly from the ownership, possession or use by or on behalf of the INSURED of any land, building, aircraft, watercraft, vessel or mechanically propelled vehicle,**
- f) **arising directly or indirectly from any dishonest, fraudulent, malicious or illegal, criminal act, error or omission or intentional wrongful acts committed by one of the INSUREDS and/or their predecessors. However with respect to employees, subject to Extension 7.3, if applicable**
- g) **arising out of any defect in computer software due to the intentional and malicious introduction of a virus**
- h) **arising out of or relating directly or indirectly from the insolvency or bankruptcy of any INSURED,**
- i) **based upon, arising out of or relating directly or indirectly from or in consequence of or in any way involving, seepage, pollution or contamination of any kind,**
- j) **in respect of which the INSURED are entitled to indemnity under any other insurance except for**
  - i) **any additional sum which is payable over and above such other insurance,**
  - ii) **any contribution that the Insurer is obliged to make under the applicable Insurance Contract Law and that contribution shall be in proportion to the respective Limit of Indemnity of the Policies,**
- k) **arising out of any circumstance(s) or occurrence(s) which could give rise to a CLAIM under this Policy of which the INSURED is aware, or ought reasonably to be aware, at inception of this Policy, whether notified under any other insurance or not,**
- l) **directly or indirectly caused by or contributed by or arising from**
  - i) **ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from a self containing process of nuclear fission,**
  - ii) **the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,**

- m) *where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a foreign judgment whether by way of Reciprocal Agreement or otherwise,*
- n) *for fines, penalties, punitive, multiple or exemplary damages, contractual guarantees or warranties,*
- o) *for loss or damage arising out of or relating directly or indirectly from war, invasion, acts of foreign enemies, acts of terrorism, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion or a popular uprising or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.*
- p) *for any loss, cost of expense for the withdrawal, recall, inspection, adjustment or disposal of the INSURED'S PRODUCTS, including due to the PROFESSIONAL SERVICES*
- q) *for any loss of or damage to the INSURED'S PRODUCTS, including due to the PROFESSIONAL SERVICES, and costs of repair, alteration, replacement, or reinstatement necessitated by any defect (suspected or known)*
- r) *arising from or in any way involving the professional services and/or the INSURED'S PRODUCTS installed, used in connection with, or used in the manufacture of aircraft, missiles or spacecraft, ground handling tools or equipment, training aids, instruction manuals or other data, advice and services and labor relating to aircraft, missiles or spacecraft.*
- s) *arising from or in any way involving libel and slander, infringement intellectual property rights, dishonesty of employees, loss of documents or vendors liability unless insured as an extension to the coverage and specifically mentioned in the Schedule.*
- t) *Liability imposed on any director and/or officer due to their activity as a director or officer in any corporation or organization.*

## 7. EXTENSIONS

The Insurer agrees to indemnify the INSURED for the following claims as extensions of coverage *only if specifically mentioned in the Schedule.*

### 7.1 DEFAMATION AND INVASION OF PRIVACY

This insurance is extended to cover any claim for compensatory damages against the INSURED arising out of **unintentional** defamation (libel, slander) or **unintentional** invasion of privacy

- a) in the conduct of the NAMED INSURED'S PROFESSIONAL SERVICES,
- b) on the NAMED INSURED'S own website,

- c) in the NAMED INSURED'S e-mail communications.

## 7.2 INTELLECTUAL PROPERTY

This insurance is extended to cover any claim for compensatory damages against the INSURED arising out of **unintentional** infringement of intellectual property rights **(excluding patent infringement and misappropriation of trade secrets)**

- a) in the conduct of the NAMED INSURED'S PROFESSIONAL SERVICES,
- b) on the NAMED INSURED'S own website,
- c) in the NAMED INSURED'S e-mail communications.

## 7.3 DISHONESTY OF EMPLOYEES

For a CLAIM of a third party arising under INSURING CLAUSE A - PROFESSIONAL INDEMNITY, WRONGFUL ACT shall also mean any dishonest, fraudulent, criminal or malicious act or omission of any employee of the NAMED INSURED.

***The Policy shall not benefit any employee who knew of or condoned any dishonest, fraudulent, criminal or malicious act or omission and there shall be no liability hereunder for any loss sustained in consequence of any dishonest, fraudulent, criminal or malicious act or omission committed by such employee after the date of discovery by the NAMED INSURED.***

## 7.4 LOSS OF DOCUMENTS

If during the PERIOD OF INSURANCE the INSURED shall discover that any DOCUMENTS entrusted to the INSURED, which may now or hereafter be, or be supposed or believed to be, in the custody of the INSURED or in the custody of any other person to or with whom such DOCUMENTS have been entrusted, lodged or deposited by the INSURED **in the ordinary course of Business**, have been destroyed or damaged or lost or mislaid and **after diligent search** cannot be found, the Insurer will indemnify the INSURED against any

- a) legal liability which the INSURED may incur to any other person in consequence of such DOCUMENTS being destroyed, damaged, lost or mislaid,
- b) cost and expenses incurred by the INSURED in replacing or restoring such DOCUMENTS,
- c) costs and expenses incurred **with the written consent of the Insurer** in the defense or settlement of any CLAIM to establish liability as described in a) above, and subject to clause 68 to the Insurance Contract Law, 1981.

## 7.5 VENDORS LIABILITY

This Policy hereby covers as additional INSURED any company or individual selling the NAMED INSURED'S PRODUCTS, **but only for CLAIMS directly arising out of their activities of VENDING the NAMED INSURED'S PRODUCTS and only in respect of any CLAIM falling under INSURING CLAUSE B - PRODUCTS LIABILITY.**

## 7.6 ADDITIONAL INSURED

This Policy hereby covers as additional INSURED any customer for whom the INSURED is carrying out any work and against whom a CLAIM is brought **due to the WRONGFUL ACT of the INSURED or in respect of the NAMED INSURED'S PRODUCTS.**

CLAIMS filed by such additional INSURED against an INSURED are covered under this policy

The Insurer waives the right of subrogation against such additional INSURED, **provided that such waiver does not apply to the benefit of an individual who acted maliciously, fraudulently or deceitfully**

## 8. DEFINITIONS

### 8.1 BODILY INJURY

BODILY INJURY shall mean any death, BODILY INJURY, illness, disease.

### 8.2 CLAIM

CLAIM shall mean:

a) in respect of CLAIMS under **INSURING CLAUSE A - PROFESSIONAL INDEMNITY:**

- i. any writ summons or other application of any description whatsoever or cross-claim or counter CLAIM issued against or served upon the NAMED INSURED for any WRONGFUL ACT, or
- ii. any written communication alleging a WRONGFUL ACT on the part of the INSURED, or
- iii. any submission by the NAMED INSURED of a notice in writing to the Insurer, concerning the receipt of information regarding the existence of a circumstance which might reasonably give rise to a CLAIM for any WRONGFUL ACT.

- b) In respect of CLAIMS under **INSURING CLAUSE B - PRODUCTS LIABILITY**:
- i. any writ or summons or other application of any description whatsoever or cross-claim or counter CLAIM issued against or served upon the NAMED INSURED for any BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS, or
  - ii. any written communication alleging on the part of the INSURED BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS, or
  - iii. any submission by the NAMED INSURED of a notice in writing to the Insurer, concerning the receipt of information regarding the existence of a circumstance which might reasonable give rise to a CLAIM for BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS.

Notwithstanding the definition a) and b) of this clause all claims attributable to or arising out of the same cause or event shall be regarded as one claim.

### **8.3 DOCUMENTS**

DOCUMENTS shall mean deeds, wills, affidavits, passports, agreements, maps, plans, records, books, letters, certificates, forms, computer programs or information stored, written or punched into card or tape or magnetic discs or taped or any other data media, and documents of any nature whatsoever, whether written, printed or reproduced by any other method (**other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments**).

### **8.4 INSURED**

INSURED shall mean

- i. the NAMED INSURED, and/or
- ii. any past, present or future director or employee, including officer of the NAMED INSURED, and/or
- iii. any other person, persons, partnership, firm or company acting for or on behalf of the NAMED INSURED.

### **8.5 NAMED INSURED**

NAMED INSURED shall mean

- the person(s), and/or
  - partnership(s), and/or
  - firm(s) or company (companies) and/or.
  - subsidiary (subsidiaries) thereof
- named in the Schedule.**

## 8.6 NAMED INSURED'S PRODUCTS

NAMED INSURED'S PRODUCTS shall mean any product sold, manufactured, supplied, maintained, repaired, installed, erected, altered, cleaned or treated, by the NAMED INSURED.

## 8.7 PERIOD OF INSURANCE

The PERIOD OF INSURANCE means the period stated in the Schedule of the Policy.

## 8.8 PROFESSIONAL SERVICES

PROFESSIONAL SERVICES shall mean :

- i. The provision of software, and/or any software or other technology, **that is an integral or embedded part of the Insured's hardware products** to a third party
- ii. The provision of services to a third party given for a fee in respect of computer systems analysis and integration, including designing, programming, data processing, consulting, servicing, distributing, installing and maintaining computer hardware or software and training in the use of such hardware or software.

## 8.9 PROPERTY DAMAGE

PROPERTY DAMAGE shall mean any loss of possession of, loss of use of, or damage to **tangible third party property**.

## 8.10 VENDING

VENDING shall mean **solely** the activities of selling or distributing. **For the avoidance of doubt, VENDING shall not include the activities of,**

- a) **changing the PRODUCT either physically or chemically or in any other way, including the addition of any warranties or performance guarantees,**
- b) **repackaging**, unless the PRODUCT was unpacked **solely** for the purpose of inspection, demonstration, testing or the substitution of parts **under instruction from the NAMED INSURED,**
- c) **demonstrating, installing, servicing or repair operations,** except such operations performed **at the vendors premises,**
- d) **failing to make such inspections, tests or servicing as the vendor has agreed to make or normally undertakes to make.**

## 8.11 WRONGFUL ACT

WRONGFUL ACT shall mean any

- a) negligent error, negligent omission, negligent act,
- b) negligent misstatement or negligent misrepresentation, negligent failure to represent,
- c) breach of warranty of authority, breach of duty, breach of trust,
- d) breach of an express or implied contractual duty to use reasonable care and skill,
- e) unintentional breach of a written contract with a client to design, produce or supply software and/or any software or other technology **that is an integral or embedded part of the Insured's hardware products** either not conforming in all material respects to the written specification forming part of the contract or failing to meet any implied statutory term concerning necessary quality, safety or fitness,

in the conduct of the NAMED INSURED'S PROFESSIONAL SERVICES.

## 9. GENERAL CONDITIONS

### 9.1 EXTENDED REPORTING PERIOD

In the event of cancellation or non-renewal of this Policy an Extended Reporting Period of **60 days following the expiry of the PERIOD OF INSURANCE** is automatically granted hereunder at no additional premium for any CLAIM **first made and reported to the Insurer during the Extended Reporting Period but only in respect of any**

- a) WRONGFUL ACT on the part of the INSURED;
- b) BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS supplied;

**before the date of cancellation or non-renewal of this Policy.**

***This Extension shall have no effect if the NAMED INSURED are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof. It is expressly agreed that, notwithstanding applicable Insurance Contract Law any cover granted under this Extension shall not contribute with any other Policy.***

### 9.2 DISCOVERY PERIOD

In the event of cancellation or non-renewal of this Policy **by the Insurer**, the NAMED INSURED shall have the right **upon payment in full and not proportionally or otherwise in part, of 75% of the annual premium set forth in the Schedule**, to have issued an endorsement providing a 365 day Discovery Period for any CLAIM

**first made and reported to the Insurer during the Discovery Period, but only in respect of any**

- a) WRONGFUL ACT on the part of the INSURED;
- b) BODILY INJURY or PROPERTY DAMAGE caused by the NAMED INSURED'S PRODUCTS supplied;

**before the date of such cancellation or non-renewal.**

**In order for the NAMED INSURED to invoke the Discovery Period option, the payment of the additional premium for the Discovery Period must be paid to the Insurer within 30 days of the non-renewal or cancellation**

The quotation by the Insurer of a reasonably different premium or Deductible or Limit of Indemnity, or reasonably changes in Policy language for the purpose of renewal shall not constitute a refusal to renew by the Insurer.

***The right to the Discovery Period shall not be available to the NAMED INSURED where:***

- a) ***cancellation or non-renewal by the Insurer is due to non-payment of premium, or***
- b) ***cancellation or non-renewal by the Insurer is due to the failure of the NAMED INSURED to pay such amounts in excess of the applicable Limit of Indemnity or within the amount of the applicable Deductible as is required by this Policy in the payment of CLAIMS.***

**At the commencement of the Discovery Period the entire premium shall be deemed earned and in the event the NAMED INSURED terminates the Discovery Period for any reason prior to its natural expiration, the Insurer will not be liable to return any premium paid.**

### **9.3 CLAIMS NOTIFICATION**

- a) The NAMED INSURED shall give to the Insurer prompt notice in writing during the Period of Insurance of:
  - i) any CLAIM made against the NAMED INSURED; or
  - ii) the receipt of notice from any person or entity of their intention to make a CLAIM against the NAMED INSURED, or
  - iii) any circumstances of which the NAMED INSURED shall become aware which might reasonably be expected to give rise to a CLAIM being made against the NAMED INSURED, giving reasons for the anticipation of such CLAIM, with full particulars as to dates and persons involved.

Such notice having been given as required above, any subsequent CLAIM made shall be deemed to have been made during the PERIOD OF INSURANCE.

- b) The NAMED INSURED shall give the Insurer such information and co-operation as the Insurer may reasonably require and **shall not disclose to anyone the existence of this Policy** unless reasonably required to do so during the course of the NAMED INSURED'S Business.

#### 9.4 CLAIMS HANDLING

Subject to clause 68 to the Insurance Contrat Law, 1981, the NAMED **INSURED as a condition to their right to be indemnified under this Policy** shall not admit liability for or settle any CLAIM or incur any costs or expenses in connection therewith without the written consent of the Insurer who shall be entitled to take over and conduct in the name of the NAMED INSURED the defense or settlement of any CLAIM.

The NAMED INSURED shall not be required to contest any legal proceedings unless a Counsel to be mutually agreed upon by the NAMED INSURED and the Insurer shall advise that such proceedings should be contested.

The NAMED INSURED shall be entitled **at their own risk** to contest any CLAIM or legal proceedings which in the opinion of the Insurer should be compromised or settled **provided that the Insurer shall not be liable for any damages, costs or expenses incurred directly or indirectly as a result of the NAMED INSURED'S refusal to compromise or settle such CLAIM or legal proceedings.**

#### 9.5 WAIVER OF SUBROGATION AGAINST DIRECTORS OR EMPLOYEES

If any payment is made under this Policy and the Insurer is thereupon subrogated to the NAMED INSURED'S rights of recovery in relation thereto, the Insurer agrees not to exercise such rights against any director or employee of the NAMED INSURED **unless the CLAIM is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or employee.**

#### 9.6 LEGAL PERSONAL REPRESENTATIVES

In the event of the death of any NAMED INSURED the Insurer will, in respect of the liability incurred by the NAMED INSURED, indemnify the NAMED INSURED'S legal personal representatives in the terms of this Policy **provided that such legal personal representatives shall, as though they were the NAMED INSURED, observe, fulfill and be subject to the terms, conditions and exclusions of this policy insofar as they can apply.**

#### 9.7 PREMIUM PAYMENT

- a) The premium and all other sums due from the NAMED INSURED to the Insurer in respect of this Policy shall be paid on the dates and in the manner agreed between the NAMED INSURED and the Insurer or their representatives.
- b) **Should any amount due from the NAMED INSURED to the Insurer not be paid on time, the amount in default shall bear index or currency linkage differences as the case may be for the period in default, together with interest and handling fees, Subject to the interest amount not exceeding that allowed in the Interest Law, 1957**

- c) Should any amount in default not be paid within 15 days of written demand by the Insurer to the NAMED INSURED, **the Insurer shall have the right to notify the NAMED INSURED in writing of cancellation of the Policy within 21 additional days should the amount in default not be paid by that date.**

## **9.8 CANCELLATION**

This policy may be cancelled by the NAMED INSURED by giving written notice of 90 days to the Insurer stating when thereafter such cancellation shall be effective.

**This policy may also be cancelled by, or on behalf of, the Insurer by 90 days notice in writing to the NAMED INSURED on the basis of the Insurer receiving or retaining pro rata Premium. If this policy shall be cancelled by the NAMED INSURED, the Insurer shall retain the customary short rate proportion of the Premium hereon (being 10% of the total premium for each month or part thereto in which the policy was in effect, with the addition of 10% of the total premium. ) Subject to there being no claim or circumstance which may give rise to a claim against an Insured within the current policy year).**

**It is agreed that the policy may be cancelled by the INSURER only due to the non payment of premium and/or in accordance with clause 7 of the Insurance Contract Law – 1981.**

Payment or tender of any unearned Premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

## **9.9 DISHONESTY**

**Notwithstanding anything to the contrary it is understood and agreed that this Policy shall not benefit any INSURED who acted dishonestly or fraudulently or maliciously in connection with the causes or circumstances of any CLAIM.**

## **9.10 LAW AND FORUM**

**This Policy shall be governed by Israeli law, in particular by the provisions of the Insurance Contract Law 5741-1981 and the Israeli Courts shall have jurisdiction in any dispute arising hereunder.**