



MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "Agreement"), dated effective as of the date signed by both parties below, is between Utiliware Corporation ("UTILIWARE") and the "Company" identified below. In order to protect certain Confidential Information which the parties desire to disclose hereunder, UTILIWARE and the Company agree to the following terms and conditions.

The terms Discloser and Recipient as used herein apply to both parties to this agreement in their respective roles as discloser of Confidential Information and recipient of Confidential Information.

1. **Confidential Information.** The "Confidential Information" of the respective parties disclosed under this Agreement shall mean any information or data relating to the proprietary software, hardware or other technology of either party, irrespective of the medium in which such information or data is embodied, any prerelease software or technology, a party's financial and business information, marketing plans and projections, and any other information that, if in tangible form, is clearly marked as "confidential" or with other similar legends by the disclosing party prior to disclosure, or, if in oral or visual form, is treated as confidential at the time of disclosure. Confidential Information shall include any copies, abstracts or notes, as well as any documents or things from which such are prepared.
2. **Obligation of Confidentiality.** For a period of three (3) years from the date of disclosure, Recipient agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of Discloser's Confidential Information as it uses with its own similar information that it does not wish to disclose, publish, or disseminate, but in no event shall Recipient use less than reasonable care to protect Discloser's Confidential Information. Recipient may disclose Confidential Information to its employees, employees of its parent and subsidiary companies and independent contractors who have a need to know such information, provided that prior to disclosure Recipient has a written agreement with such parties sufficient to require that party to treat the Confidential Information in

accordance with this Agreement. If Recipient makes any copies of Discloser's Confidential Information, it shall mark such copies as confidential. If software is provided to Recipient under this Agreement, Recipient agrees not to reverse compile or disassemble the software to discover the human perceivable portions of the code.

3. **Exceptions.** No obligation of confidentiality applies to any Confidential Information that Recipient can show: (i) is, or becomes, publicly available without breach of this Agreement, but only from such date as it becomes so available; (ii) was rightfully in the possession of Recipient without obligation of confidentiality prior to receipt thereof from Discloser; (iii) was rightfully disclosed to Recipient by a third party without obligation of confidentiality; (iv) is independently developed by Recipient without use of the Confidential Information; or (v) is disclosed by Recipient with Discloser's prior written consent.
4. **Purpose.** Recipient may use the Confidential Information solely in connection with Recipient's business discussions and agreements with Discloser.
5. **Ownership.** All Confidential Information remains the property of Discloser and/or its licensors.
6. **Termination.** This Agreement shall begin on the Effective Date above. Either party may terminate this Agreement at any time upon written notice to the other. Upon termination of this Agreement, or earlier upon discloser's request, Recipient shall promptly return or destroy all documents and tangible items in its possession which contain any part of the Confidential Information of Discloser. In the event of termination of this Agreement, all obligations of confidentiality shall survive and continue to bind Recipient in accordance with their terms.
7. **Disclaimer.** All Confidential Information is provided "AS IS", WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. Discloser does not represent or warrant the accuracy or completeness of the Confidential Information, that it will release any product related to the Confidential Information, or that target dates will be met. The entire risk



arising out of the use of the Confidential Information remains with Recipient. Discloser may change or cancel its plans at any time.

8. **Limitation of Liability.** IN NO EVENT SHALL DISCLOSER BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS) ARISING OUT OF RECIPIENT'S USE OF OR INABILITY TO USE THE CONFIDENTIAL INFORMATION.
9. **General.** a. This Agreement shall be governed and construed in accordance with the laws of California (without regard to conflicts of laws provisions). In any legal proceeding arising out of this Agreement, the prevailing party shall be entitled to an award of its costs and reasonable attorneys' fees. The parties agree that the state and federal courts in California shall have exclusive jurisdiction and venue in any such proceeding, and each party hereby submits to the jurisdiction of such courts. b. Export Constraints. Recipient certifies that the Confidential Information will only be used for the purposes expressly stated herein and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Recipient shall adhere to applicable export laws and regulations, including those of the U.S. Export Administration, and shall not export or re-export any technical data or products received from Discloser or the direct product of such technical data to any proscribed country listed in the regulations unless properly authorized by the U.S. government or other applicable governing body. c. A breach of this Agreement by Recipient shall permit Discloser, when seeking to enforce any of the provisions of this Agreement, to obtain immediate injunctive relief without the necessity of posting bond. Such injunctive relief shall be cumulative and not in lieu of any other remedies at law or in equity available to Discloser. d. Neither party may assign its rights or delegate its duties or obligations under this Agreement without prior written consent, which shall not be unreasonably withheld. The parties acknowledge that they have read this Agreement, understand it, and agree to be bound by the terms and conditions. Further, they agree that the complete and exclusive

statement of the agreement between the parties relating to this subject shall consist of this Agreement. Any reproduction of this Agreement by reliable means will be considered an original of this document. This Agreement is executed in English.

("Company")

Signature:

Name:

Title:

Company:

Address:

Phone:

Fax: Date:

Utiliware Corporation

Signature:

Name:

Title:

Date: