

Mutual Confidentiality Agreement

THIS AGREEMENT is made as of

..... (the “Effective Date”)

by and between

Averbis GmbH, Salzstraße 15, 79098 Freiburg, Germany (“Averbis”)

and

..... (“Company”)

(individually referred to as the “Party” or collectively known as the “Parties”).

WHEREAS, Averbis and Company are engaged in discussions regarding a potential business relationship (the “Purpose”); and

WHEREAS, in connection with the Relationship, a party may request from the other (in such case, the “Recipient”) and/or disclose to the other (in such case, the “Disclosing Party”) certain business, financial, technical, and other Confidential Information (as defined below) concerning their respective businesses and affairs that is not available to the public.

IN WITNESS WHEREOF, The Parties agree as follows:

1. **Proprietary Information.** “Proprietary Information” as used herein means trade secrets and confidential or proprietary information, including, without limitation, proprietary unpublished data, software products or services, quotes, scope of work or statements of work, and documents describing inventions, secret/not publicly known processes, technical information, methods, research and other know-how, designs, drawings, specifications, ideas and prototypes which:
 - a) are disclosed by either Party to the other Party; and
 - b) is disclosed either (i) in a writing bearing a label or stamp identifying the information as secret, confidential, or proprietary, or (ii) orally with a designation of such information as secret, confidential, or proprietary prior to or at the time of the oral disclosure and a subsequent reduction of such information to writing and sent to the Receiving Party within thirty (30) days of the oral disclosure with a notice in such writing (including e-mail) that all, or a portion of, such information is secret, confidential or proprietary.
2. **Use and Obligation of Confidence.** In consideration of receiving any Proprietary Information, which the Disclosing Party in its sole discretion elects to disclose, the Receiving Party shall:
 - a) use the Proprietary Information of the Disclosing Party only for the Purpose contemplated herein, or as the Disclosing Party shall otherwise in writing permit, and for no other purpose; in particular, and without limitation, the Receiving Party shall not, without the written consent of the Disclosing Party, use any Proprietary Information to directly or indirectly reproduce, disclose, divulge, disseminate, publish, reveal, reverse engineer, design, make or sell products or otherwise make known the Confidential Information to anyone who is not a Party to this Agreement; and
 - b) hold the Proprietary Information in strict confidence and disclose it only on a need-to-know basis to its own employees or employees of its affiliates who perform, review, or act on the evaluations described in Section 2(a), unless otherwise agreed in writing by the other Party.

Except as otherwise provided in this paragraph 2 and paragraph 3 below, the Receiving Party of Proprietary Information shall not divulge any part of such information, directly or indirectly, to any person or entity for any purpose whatsoever, and shall not make use of such information without the prior written consent of the Disclosing Party. The obligations of the Parties (and employees to whom Proprietary Information has been disclosed as herein permitted) under Section 2 will survive the termination of this Agreement.

3. **Exceptions.** Notwithstanding Sections 1 and 2, this Agreement shall impose no obligations upon either Party with respect to any Proprietary Information which: (a) is now or subsequently becomes known or available by publication, commercial use or otherwise without breach of this Agreement; (b) is known to the Receiving Party at the time of receipt, provided that such prior knowledge can be substantiated by the Receiving Party’s records; (c) is subsequently rightfully furnished to the Receiving Party by a third person without a restriction of disclosure; (d) is independently

developed by employees of the Receiving Party who have not had access to the Disclosing Party's Proprietary Information; or (e) which the Receiving Party is required by law to disclose.

- 4. **No License.** Neither the execution of this Agreement nor the furnishing of any Proprietary Information hereunder shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license under or title to any invention or patent now or hereafter owned or controlled by either Party.
- 5. **No Commitment to Further Agreements; No Claims.** This Agreement is not, and shall not be construed to be, an obligation to enter into any other agreement or contract or to result in any claim whatsoever by either Party against the other Party for reimbursement of cost for any effort expended.
- 6. **Working With Others.** This Agreement will not preclude either Party from working with others in any connection, provided that the obligations of Section 2 are respected.
- 7. **Ownership and Return of Proprietary Information.** All Proprietary Information disclosed to the Receiving Party and all tangible property embodying the same shall be and remain the property of the Disclosing Party. Upon request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party any and all documents and tangible information of any sort containing Proprietary Information received from the Disclosing Party.
- 8. **Term.** This Agreement shall be effective as of the Effective Date (defined above) upon execution of both Parties. Except for the rights and obligations of Section 2 above with respect to Proprietary Information disclosed prior to expiration, this Agreement shall expire five (5) years after the date written below, unless earlier terminated upon written notice by one Party to the other. Early termination upon written notice shall be effective thirty (30) days after mailing such notice.
- 9. **No Assignment.** Neither Party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party, except to a successor in ownership of substantially all of the assets of a Party, which successor in ownership shall expressly assume in writing the performance of the terms and conditions of this Agreement.
- 10. **Inurement.** This agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective subsidiaries, successors, permitted assigns, legal representatives, and all corporations controlling them or controlled by them.
- 11. **Relationship of the Parties.** This relationship of the Parties shall be that of independent contractors and nothing contained herein shall be deemed to create any relationship of agency, joint venture or partnership. Neither Party hereto shall have any power to commit, contract for or otherwise obligate the other Party.
- 12. **Entire Agreement; Choice of Law; Venue.** This Agreement is the entire agreement between the Parties hereto and supersedes all other agreements and understandings relating to the subject matter hereof. This Agreement (a) may be amended only by a written amendment duly executed by the Parties and (b) will be governed by and construed in accordance with the law of Germany without regard to conflicts of law principles. The parties agree that the exclusive venue for any disputes arising under this Agreement shall be the courts located in Freiburg, Germany.
- 13. **Counterparts.** This agreement may be executed in two or more counterparts including signing a facsimile copy. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

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

AVERBIS

.....

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____