



## MUTUAL CONFIDENTIALITY AGREEMENT

This MUTUAL CONFIDENTIALITY AGREEMENT (the "Agreement") is made and entered into as of the (the "Effective Date") by and between **HABA Sales GmbH & Co. KG** whose registered office is at Bad Rodach, August-Grosch-Str. 28-38 ("HABA Sales") and ("Company").

WHEREAS HABA Sales and Company (each, a "Party" and, together, the "Parties") desire to disclose or may have disclosed certain Confidential Information for the purpose of exploring a business opportunity of mutual interest, which they desire to keep confidential on the terms set out herein.

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

### **1. Confidential Information.**

(a) "Confidential Information" means nonpublic information that a Party to this Agreement ("Discloser") designates as being confidential to the Party that receives such information ("Recipient") or which, under the circumstances surrounding disclosure ought reasonably to be treated as confidential by the Recipient. "Confidential Information" includes information in tangible or intangible form concerning Discloser's, its customers' or its suppliers' products, technology, services, finances, personnel or business practices or policies, agreement terms, pricing information, information relating to research and development, know-how, methodologies, inventions, specifications, software (source and object code), market analysis, research strategies, projections and forecasts, client and shareholder names and other information, employee names and information, materials, products and deliverables developed and discoveries and contributions made by Discloser and information received from others that Discloser is obligated to treat as confidential. For the avoidance of doubt, Confidential Information includes any copies or notes derived from or containing Confidential Information. Except as otherwise indicated in this Agreement, the term "Discloser" includes all Affiliates of the Discloser. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a Party.

- (a) Confidential Information will not, however, include any information which:
- (i) is or subsequently becomes publicly available without Recipient's breach of any obligation owed to Discloser;
  - (ii) is already in the possession of the Recipient at the time of disclosure by the Discloser, as shown by documents and other competent evidence in the Recipient's possession;
  - (iii) is obtained by the Recipient from a third party without a breach of such third party's obligations of confidentiality; or
  - (iv) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

### **2. Obligations Regarding Confidential Information**

#### **2.1. Obligations.** Recipient agrees:

- (i) not to use Discloser's Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the Parties;



- (ii) not to disclose the Discloser's Confidential Information to any third party (other than Representatives as defined and permitted below) including, without limitation, any competitor of the Discloser;
- (iii) only to disclose Confidential Information of the Discloser to its Affiliates, employees, consultants, board members, officers, managers, members, partners, agents, or representatives (all collectively, the "Representatives") who are required to have the information and only if those Representatives (a) are advised of the sensitive nature of the Confidential Information and (b) are bound by duties of confidentiality no less stringent than those outlined in this agreement;
- (iv) to take reasonable care to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information, including all measures that Recipient takes to protect its own confidential information of a similar nature;
- (v) to reproduce the Discloser's proprietary rights notices on any copies of Confidential Information, in the same manner in which such notices were set forth in or on the original; and
- (vi) to promptly notify the Discloser in writing of any use or disclosure of Confidential Information in violation of this Agreement of which the Recipient becomes aware. Recipient shall further be responsible for any breach of the terms of this Agreement by its Representatives as if Recipient committed such breach itself.

**2.2. Disclosure Required by Law.** Recipient may disclose Confidential Information of Discloser to the extent required in accordance with a judicial or other governmental order, provided that Recipient (a) gives the Discloser reasonable notice prior to such disclosure to allow Discloser a reasonable opportunity to seek a protective order or equivalent, unless the Recipient is legally prohibited from doing so, and (b) to the extent practical, obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

**3. Ownership; No Reverse Engineering.** Recipient may not assert any claim of title or ownership to Discloser's Confidential Information or any portion thereof. If Confidential Information consists of computer software disclosed in object code form, Recipient may not reverse engineer, disassemble or decompile, or take any other steps to access the source code or derive a source code equivalent thereof.

**4. Confidentiality Period.** Recipient's obligations under this Agreement expire on the earlier of (a) written notification from the Discloser that the Confidential Information is no longer confidential or (b) the Parties' entry into a separate, subsequent agreement that contains confidentiality and non-disclosure provisions that supersede this Agreement as to the Confidential Information.

**5. No Warranty; No Liability. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." DISCLOSER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION, AND NEITHER DISCLOSER NOR ITS REPRESENTATIVES HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO THE USE OF OR RELIANCE UPON THE CONFIDENTIAL INFORMATION BY RECIPIENT.**

**6. Return or Disposal of Confidential Information.** All documents and other tangible objects containing or representing Confidential Information which have been disclosed by the Discloser to the Recipient, and all copies thereof which are in the possession of the Recipient, shall be and remain the property of the Discloser and shall be promptly destroyed or returned to the Discloser upon request. Recipient will provide to Discloser upon request, within ten days, a certificate of any of its executive officers certifying that all Confidential Information of Discloser has either been destroyed or returned to Discloser.



**7. No License.** Nothing in this Agreement is intended to grant any rights to either Party under any patent, copyright, trade secret or other intellectual property right of the other Party, nor shall this Agreement grant either Party any rights in or to the Confidential Information of the other Party except as expressly set forth herein.

**8. Remedies.** Each Party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other Party, entitling the other Party in such event to seek injunctive relief in addition to all legal remedies.

**9. Miscellaneous.**

**9.1. No Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party; however, either Party may assign or transfer this Agreement in connection with a merger, acquisition, sale of substantially all its assets or other such corporate reorganization.

**9.2. Governing Law.** This Agreement shall be governed by the laws of the Federal Republic of Germany and the parties submit to the non-exclusive jurisdiction of the courts of Germany.

**9.3. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and it supersedes any and all prior and contemporaneous agreements or representations. Any modification or amendment to this Agreement, including this written form clause, is only valid if it is in writing. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

**9.4. Severability.** If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

**9.5. Representation of Authority.** Each Party warrants and represents that this Agreement has been executed by a duly-authorized representative of such Party, and this Agreement constitutes the legal, valid and binding obligation of such Party.

**AGREED AND ACCEPTED:**

**- HABA Sales GmbH & Co. KG-**

Bad Rodach, .....  
Place, date:

Signature: .....

Name: .....

Title: .....

Signature: .....

Name: .....

Title: .....

**- Gesellschaft -**

.....  
place, date:

Signature: .....

Name: .....

Title: .....