

Kubit GMBH NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement") is made and entered into as of the later of the two signature dates below by and between kubit GMBH, a German corporation ("kubit"), and ("Recipient"). kubit and Recipient may be referred to in this Agreement collectively as the "Parties" and individually as a "Party".

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT AND THE DISCLOSURE OF CONFIDENTIAL INFORMATION, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition of Confidential Information and Exclusions.

- (a) "Confidential Information" means nonpublic information that kubit designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential by Recipient. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased kubit software or hardware products, product names, code names, product development plans and results, research activities and results, improvements, techniques, inventions (whether patentable or not), computer programs, code, documentation, algorithms, formulas, data structures, scripts, protocols, applications programming interfaces and other technical information, marketing or promotional information of any kubit product, product pricing, product costs, business opportunities and financial information, strategies, timetables, forecasts, kubit's business policies, practices or processes, ideas, know-how, expertise of employees or consultants, customer information, customer data, and information received from others that kubit is obligated to treat as confidential, and any other information disclosed to Recipient as part of their participation in kubit development feedback events. Except as otherwise indicated in this Agreement, "kubit" also includes all Affiliates of kubit and, except as otherwise indicated, the term "Recipient" also includes all Affiliates of the Recipient. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party.
- (b) Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Recipient's breach of any obligation owed to kubit; (ii) Recipient can show through written records that became known to Recipient prior to kubit's disclosure of such information to Recipient pursuant to the terms of this Agreement; (iii) became known to Recipient from a source other than kubit other than by the breach of an obligation of confidentiality owed to kubit; or (iv) is independently developed by Recipient without use or access to the of Confidential Information, as shown by Recipient's written records.

2. Obligations Regarding Confidential Information

(a) Recipient shall:

(i) Refrain from disclosing any Confidential Information to third parties for a period of five (5) years from disclosure of any Confidential Information following the date that kubit first discloses such Confidential Information to Recipient, except as expressly provided in Sections 2(b) and 2(c) of this Agreement;

(ii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information;

(iii) Refrain from disclosing, reproducing, summarizing, distributing and/or otherwise using the Confidential Information except for the specific purpose of providing Feedback, (as defined in Kubit Confidential Page 2 Rev 07/05 Section 4) in pursuance of Recipient's business relationship with kubit, and only as otherwise provided hereunder; and

(iv) Refrain from reverse engineering, decompiling or disassembling any prototypes, software code and/or pre-release hardware devices disclosed by kubit to Recipient under the terms of this Agreement, except as expressly permitted by applicable law.

(b) Recipient may disclose Confidential Information in accordance with a judicial or other governmental order, provided that Recipient either (i) gives the undersigned kubit representative reasonable notice prior to such disclosure to allow kubit a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written

assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, Recipient shall not disclose any computer source code that contains Confidential Information in accordance with a judicial or other governmental order unless it complies with the requirement set forth in sub-section (i) of this Section 2(b).

- (c) The undersigned Recipient may disclose Confidential Information only to Recipient's employees and consultants on a need-to-know basis. The undersigned Recipient will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement. Recipient hereby guarantees the performance of the provisions hereof by each person obtaining disclosure of such Confidential Information directly or indirectly from Recipient.
- (d) Recipient shall notify the undersigned kubit representative immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Recipient and its employees and consultants, and will cooperate with kubit in every reasonable way to help kubit regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.
- (e) Recipient shall, at kubit's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to Recipient as Confidential Information, or at kubit's option, certify destruction of the same.

3. No Reliance

Confidential Information may concern planned or future development efforts for existing or new kubit products and services. Confidential Information is not intended to be a promise or guarantee of future delivery of products, services or features but merely reflect our current plans, which may change. Accordingly, Confidential Information may not be relied on for purchasing decisions or for any other purpose.

4. Suggestions and Feedback

Recipient may provide to kubit reasonable suggestions, comments and other feedback ("Feedback") with respect to the Confidential Information provided by kubit. Feedback, even if designated as confidential by Recipient, shall not, absent a separate written agreement, create any confidentiality obligation for or upon kubit. Recipient grants kubit, under all of Recipient's intellectual property and proprietary rights, the following worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up rights: (1) to make, use, copy, modify, and create derivative works of, the Feedback as part of any kubit product, technology, service, specification or other documentation (individually and collectively, "kubit Works"), (2) to publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend copies of the Feedback (and derivative works thereof) as part of any kubit Work, (3) solely with respect to Recipient's copyright and trade secret rights, to sublicense to third parties the foregoing rights, including the right to sublicense to further third parties, and (4) to sublicense to third parties any claims of any patents owned or licensable by Recipient that are necessarily infringed by a third party product, technology or service that uses, interfaces, interoperates or communicates with the Feedback or portion thereof incorporated into a kubit product, technology or service. Further, Recipient warrants that Recipient's Feedback is not subject to any license terms that would purport to require kubit to comply with any additional obligations with respect to any kubit Works that incorporate any Feedback.

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5. Remedies

Recipient acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that kubit shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

6. Ownership

- (a) All Confidential Information is and shall remain the property of kubit. By disclosing Confidential Information to Recipient, kubit does not grant any express or implied right to Recipient to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Recipient may only use the Confidential Information for the purpose of providing Feedback thereon to kubit, and for no other purpose. kubit reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

- (b) In the event that kubit provides any computer software and/or hardware to Recipient as Confidential Information under the terms of this Agreement, kubit hereby grants Recipient a non-exclusive, personal, limited, non-assignable, non-sub-licensable, royalty-free license to use a single copy of any software provided at recipient's principle office in a secure location, solely in connection with and for the purpose of evaluating and providing Feedback. Unless otherwise agreed by kubit and the Recipient, all such computer software and/or hardware is provided "AS IS" without warranty of any kind, and Recipient agrees that neither kubit nor its suppliers shall be liable for any damages whatsoever arising from or relating to Recipient's use or inability to use such software and/or hardware.

7. Miscellaneous

- (a) The parties agree to comply with all applicable international and national laws that apply to (i) any Confidential Information, or (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.
- (b) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of kubit, the Recipient, their agents, or employees, but only by an instrument in writing signed by an authorized employee of kubit and the Recipient. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- (c) If either kubit or the Recipient employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. This Agreement shall be construed and controlled by the laws of Germany, and kubit and the Recipient further consent to exclusive jurisdiction by courts sitting in Dresden. Process may be served on kubit and the Recipient in writing, by Mail, postage prepaid, certified or registered, return receipt requested, or overnight courier or by such other method as is authorized by German law to the addresses of the Parties set forth below. Notice is not deemed to have been given to kubit unless notice to kubit's General Counsel has been delivered.
- (d) This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that Recipient may not assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of kubit.
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- (e) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- (f) kubit may terminate this Agreement with or without cause upon written notice to the Recipient. All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Recipient:
Address:

kubit GmbH
Fiedlerstr. 36
01307 Dresden
Germany

Name (Print):

Name

Signature:

Signature:

Company:

Company

Title:

Title:

Date:

Date:
