

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM333419

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
art of defence GmbH		06/07/2011	COMPANY: GERMANY
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	aptus 651. GmbH		
<b>Street Address:</b>	Torstr. 138		
<b>City:</b>	Berlin		
<b>State/Country:</b>	GERMANY		
<b>Postal Code:</b>	10119		
<b>Entity Type:</b>	COMPANY: GERMANY		
<b>PROPERTY NUMBERS Total: 6</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3764344	HYPERSOURCE	
<b>Registration Number:</b>	3699491	WEB OF DEFENCE	
<b>Registration Number:</b>	3678208	SECURITY 2.0	
<b>Registration Number:</b>	3574455	SIPGUARD	
<b>Registration Number:</b>	3737297	HYPER GUARD	
<b>Registration Number:</b>	3667100	ART OF DEFENCE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3172317433		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	317-236-1313		
<b>Email:</b>	dwong@btlaw.com		
<b>Correspondent Name:</b>	David A. W. Wong		
<b>Address Line 1:</b>	11 S. Meridian St.		
<b>Address Line 4:</b>	Indianapolis, INDIANA 46204-3535		
<b>ATTORNEY DOCKET NUMBER:</b>	34963-100		
<b>NAME OF SUBMITTER:</b>	David A. W. Wong		
<b>SIGNATURE:</b>	/dwong/		
<b>DATE SIGNED:</b>	02/26/2015		

CH \$165.00 3764344

**Total Attachments: 25**

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The deed is written only on one side  
of each page throughout.

**Deed Roll No. A 1364 /2011**

(art of defence GmbH  
Asset Sale and Transfer Agreement)



**R e c o r d e d**

in Berlin  
on 7 June 2011

Before me, the undersigned notary

**Stefan Aldag,  
Mohrenstraße 42, 10117 Berlin,**

who had, upon request, gone to the offices of Squire, Sanders & Demsey (UK) LLP,  
Unter den Linden 14, 10117 Berlin, were present today:

1. Mr. Gerhard Wacker,  
born on 13 March 1974,  
with business address at: Äußere Suizbacher Straße 100, 90941 Nürnberg,  
personally known

The person appearing sub 1. declared not to be acting in his own name, but –  
in each case – on the basis of a power of attorney presented as original and at-  
tached hereto as certified copy for:

- a) **art of defence GmbH**,  
Bruderwöhrdstraße 15b, 93055 Regensburg,  
registered with the commercial register of the local court of Regensburg  
under HRB 9708,
  - b) **Dr. Georg Heß**,  
born on 27 February 1966,  
Terofalstraße 3, 84405 Dorfen,
  - c) **Mr. Alexander Meisel**,  
born on 23 November 1973,  
St.-Peters-Weg 1, 93047 Regensburg,
  - d) **S-Refit AG**,  
Sedanstr. 15, 93055 Regensburg  
registered with the commercial register of the local court of Regensburg  
under HRB 8641,
  - e) **Technologie Beteiligungsfonds Bayern II GmbH & Co. KG**,  
Altstadt 72, 84028 Landshut,  
registered with the commercial register of the local court of Landshut  
under HRA 8622
  - f) **Clusterfonds Innovation GmbH & Co. KG**,  
Altstadt 72, 84028 Landshut,  
registered with the commercial register of the local court of Landshut,  
under HRA 9808
2. Dr. Volker Heidebüchel,  
born on 15 December 1968,  
with business address at: Unter den Linden 14, 10117 Berlin,  
personally known

The person appearing sub 2. declared not to be acting in his own name, but –  
in each case – on the basis of a power of attorney presented as original and at-  
tached hereto as certified copy for:

- a) **aptus 651. GmbH**  
(to be renamed Zeus Technology GmbH),  
Torstr. 138, 10119 Berlin,  
registered with the commercial register of the local court of Charlotten-  
burg under HRB 133166 B

b) **Zeus Technology Limited,**  
The Jeffries Building, Cowley Road, Cambridge, Cambridgeshire,  
CB4 0WS, UK, a limited liability company under the laws of England,  
registered at the Companies House under Company Number 03085230

3. Ms. Marianne Kwitkowski,  
born on 31 December 1982,  
with business address at: Mohrenstraße 42, 10117 Berlin,  
personally known

The person appearing sub 3. declared not to be acting in her own name, but on the basis of a power of attorney presented as original and attached hereto as certified copy for:

**KfW Anstalt öffentlichen Rechts,**  
Niederlassung Bonn,  
Ludwig-Erhard-Platz 1-3, 53179 Bonn

The notary asked the persons present about previous involvement as defined in section 3 para (1) sentence 1 no. 7 German Notarisation Act. There was no previous involvement.

From a conversation with the persons present, I, the Notary Public, took evidence that each of them has sufficient command of both the English and German language to follow and to understand the document here notarized.

The persons present requested the Notary Public to notarize the following:

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**ASSET SALE AND TRANSFER AGREEMENT**

**RELATING TO THE ASSETS OF**

**ART OF DEFENCE GMBH**

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**ASSET SALE AND TRANSFER AGREEMENT**

**RELATING TO THE ASSETS OF  
ART OF DEFENCE GMBH**

**BETWEEN**

- (1) **art of defence GmbH**  
Bruderwöhrd Str. 15b  
93055 Regensburg  
registered at the commercial register of the Regensburg local court under HRB 9708  
("Seller")

**AND**

- (2) **aptus 651 GmbH (to be renamed Zeus Technology GmbH)**  
Torstraße 138,  
10119 Berlin,  
registered at the commercial register of the Charlottenburg local court under HRB  
133166 B,  
("Buyer")

**AND**

- (2) **Zeus Technology Limited**  
the Jeffries Building,  
Cowley Road, Cambridge,  
Cambridgeshire, CB4 0WS,  
England,  
registered at the Companies House under Company number 03085230  
("Guarantor")

**UNDER PARTICIPATION OF**

- (3) **Dr Georg Heß,**  
Terofalstraße 3  
84405 Dorfen  
("Dr Heß")

- (4) **Alexander Meisel,**  
St. Peters Weg 1,  
93047 Regensburg  
("Mr Meisel")

- (5) **S-Refit AG,**  
Sedanstraße 15,  
93055 Regensburg,  
registered at the commercial register of the Regensburg local court under HRB 8641  
("S-Refit")

- (6) **KfW Anstalt des öffentlichen Rechts,**  
Niederlassung Bonn,  
Ludwig-Erhard-Platz 1-3,  
53179 Bonn

("KfW")

- (7) **Technologie Beteiligungsfonds Bayern II GmbH & Co. KG,**  
Altstadt 72,  
84028 Landshut  
registered at the commercial register of the Landshut local court under HRA 8622

("TBB")

- (8) **Clusterfonds Innovation GmbH & Co. KG,**  
Altstadt 72  
84028 Landshut  
registered at the commercial register of the Landshut local court under HRA 9808

("Clusterfonds")

Dr Heß, Mr Meisel, S-Refit, KfW, TBB and Clusterfonds collectively the  
"Shareholders",

and each of them a "Shareholder",

the Seller, the Buyer, the Guarantor and the Shareholders collectively the "Parties",

and each of them a "Party"



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## PREAMBLE

- A The Seller is a German provider of application security technology.
- B The Shareholders own 100% of the issued share capital of the Seller.
- C The Buyer is a wholly owned subsidiary of the Guarantor, an English software company delivering software-based load balancing and traffic management solutions for virtual and cloud environments.
- D The Seller intends to sell and the Buyer intends to buy the assets of the Seller, subject to the terms and conditions as provided for in this Agreement.

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

"Affiliates" means any individual persons or legal entities who or which are affiliated companies (*verbundene Unternehmen*) within the meaning of Section 15 of the German Stock Corporation Act (*Aktiengesetz*).

"Agreement" means this asset sale and transfer agreement.

"AO" means the German General Tax Code (*Abgabenordnung*).

"Assets" means the assets of the Seller as defined in Clause 5.1.

"Assigned Contracts" means the contracts assigned by the Seller to the Buyer as set forth in Clause 5.1.

"Assumed Liabilities" means the liabilities assumed by the Buyer as set forth in Clause 4.2.

"Best Knowledge of the Seller" means the knowledge of the Seller as defined in Clause 9.4.

"BGB" means the German Civil Code (*Bürgerliches Gesetzbuch*).

"Breach" means the breach of Guarantees as defined in Clause 10.1.

"Business" means the business of the Seller and the Subsidiary carried on by the Seller under the name "art of defence" as a going concern as defined in Clause 2.1.

"Business Day" means any day except Saturday, Sunday or a statutory holiday in Frankfurt/Main, Germany.

"Buyer's Group" means the Buyer, any subsidiary of the Buyer, any holding company of the Buyer, any subsidiary of any holding company of the Buyer and any other affiliated companies of the Buyer (*verbundene Unternehmen*) within the meaning of Section 15 of the German Stock Corporation Act (*Aktiengesetz*), from time to time.

"Buyer's Solicitors" means Squire Sanders & Dempsey (UK) LLP of Rutland House, 148 Edmund Street, Birmingham, B3 2JR and of Unter den Linden 14, 10117 Berlin.

"**Claim Notice**" means the notice of the Buyer as defined in Clause 10.3.

"**Closing**" means the closing of this Agreement in accordance with Clause 15.

"**Conditional Contracts**" means the contracts as defined in Clause 5.1.

"**Confidential Business Information**" means all or any information of a secret or proprietary or confidential nature (however stored) and not publicly known which is owned by the Seller or which is used in or otherwise relates to the business, customers or financial or other affairs of the Seller, including, without limitation, information relating to:

- (a) the business methods, technical processes, corporate plans, management systems, finances, new business opportunities or development projects of the Seller; or
- (b) the marketing or sales of any past or present or future products, goods or services of the Seller including, without limitation, customer names and lists and other details of customers, sales, sales statistics, market share statistics, prices, market research reports and surveys and advertising and other promotional materials; or
- (c) future projects, business development or planning, commercial relationships and negotiations; or
- (d) any trade secrets or other information relating to the provision of any product or service of the Seller.

"**Consideration**" means the total purchase consideration set out in Clause 7.

"**Damages**" means the damages set out in Clause 10.1.

"**Date of Closing**" means the Berlin business day on which Closing occurs in accordance with Clause 15.

"**Deferred Payment**" means the sum of € 600,000.

"**Deferred Payment Date**" means 30 April 2012 or in the full discretion of the Buyer at any time earlier than 30 April 2012.

"**Deferred Payment Escrow Account**" means an interest bearing account in the joint names of the Buyer and the Seller at a reputable bank into which the Escrow Amount (or part of it) may be paid in accordance with Clause 8.3. The cost of the Deferred Payment Escrow Account would be borne by the Seller and the Buyer in equal parts.

"**Determined Amount**" means, in respect of a Determined Claim (i) the amount agreed between the Seller and the Buyer as payable by the Seller to the Buyer or (ii) the total amount (including costs) which the Seller is ordered by an arbitral award (*Schiedsspruch*) to pay to the Buyer.

"**Determined Claim**" means a claim in respect of Damages (a) which is agreed between the Seller and the Buyer or (b) in respect of which an arbitral award is adjudicated.

"Due Diligence Information" means all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning the Business (including its employees) and includes analyses, summaries, memoranda or other documents prepared and statements or presentations made by or on behalf of the Seller and made available to the Buyer, the Guarantor, their managers / directors and their advisers in the course of the due diligence, whether or not in writing, and which contain or otherwise reflect such information.

"Effective Date" means 01 June 2011.

"Excluded Contracts" means the contracts as defined in Clause 5.1.

"Escrow Amount" means the sum of €200,000.

"Excluded Liabilities" means the liabilities not assumed by the Buyer as set forth in Clause 4.3.

"Financial Statements" means the unaudited, not approved balance sheets of the Seller as of 31 December 2010.

"GmbHG" means the German Act on Limited Liability Companies (*Gesetz betreffend Gesellschaften mit beschränkter Haftung*).

"Guarantees" means the Guarantees contained in EXHIBIT 9 and "Guarantee" means any one of them.

"HGB" means the German Commercial Code (*Handelsgesetzbuch*).

"Initial Payment" means the sum of € 400,000.

"IP Rights" means the intellectual property rights as defined in Clause 3.1(a).

"Licensed IP Rights" means the IP Rights as defined in Clause 13.4 of EXHIBIT 9.

"Managers" means Dr Heß and Mr Meisel.

"Owned IP Rights" means the IP Rights as defined in Clause 13.4 of EXHIBIT 9.

"Property" means the real property as defined in Clause 12 of EXHIBIT 9.

"Proposed Transaction" means the acquisition of the Business of the Seller.

"Security Interest" means any *Belastungen, Hypotheken, Grundschulden, Sicherungsabtretungen und -übereignungen, Garantien, Bürgschaften, Freistellungen, Pfandrechte, Nießbrauchsrechte, Treuhandvereinbarungen, Zurückbehaltungs- und Aufrechnungsrechte, Optionen, Vorkaufs- oder Vorerwerbsrechte* or any encumbrance, or their equivalent in any jurisdiction other than Germany, except for retentions of title ("*Eigentumsvorbehalte*"), similar customary security interests, licenses and statutory security interests incurred in the ordinary course of business.

"Seller's Operational Costs" means any payments by any of the Shareholders to the Seller (as contribution or loan) since and including the loan agreement between S-Refit and the Seller as of 22 March 2011 and prior to Closing to cover operational costs in the total amount of € 200,000

"Seller's Lawyers" means Rödl Rechtsberatungsgesellschaft Steuerberatungsgesellschaft mbH, Äußere Suizbacher Straße 100, 90491 Nürnberg.

"Subsidiary" means art of defence Inc., One Embarcadero Center, Suite 1060, San Francisco, CA 94111, United States.

"Seller" means art of defence GmbH, having its registered office at Bruderwöhrd Str. 15b, 93055 Regensburg, Germany, with a share capital of € 73,650.00, registered with the commercial register at Regensburg local court under HRB 9708.

"Third Party Claim" means any claim of third parties as defined in Clause 10.4.

"Taxes" means all direct or indirect forms of taxation, duties, impositions, levies, withholding taxes, social security or other similar contributions and charges of whatsoever nature payable under applicable law imposed by any regional, national or other authority or body and all penalties, costs and interest relating thereto.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Transferred Employees" means the employees as defined in Clause 6.1 and listed in EXHIBIT 6.1.

1.2 Persons. Unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include all other genders, any reference to "persons" includes individuals, bodies corporate, companies, partnerships, trusts and all other legal entities, all references to time are to German time and any reference to a party is to a party to this Agreement.

1.3 Headings. Clause headings are for convenience only and shall not affect the interpretation of this Agreement.

1.4 Exhibits. The Exhibits to this Agreement shall for all purposes form part of this Agreement.

1.5 German terms. If provisions in this Agreement include English terms after which either in the same provision or elsewhere in this Agreement German terms have been inserted in brackets and/or italics, the respective German term alone and not the English terms shall be authoritative for the interpretation of the respective provisions.

## 2 SALE AND TRANSFER OF BUSINESS

2.1 Business. The Business to be sold and transferred to the Buyer under the terms of this Agreement shall include:

- (a) the Assets as defined in Clause 3.1;
- (b) the Assumed Liabilities as defined in Clause 4.1;
- (c) the Assigned Contracts and possibly the Conditional Contracts as defined in Clause 5.1; and
- (d) the Transferred Employees as defined in Clause 6.1.

2.2 Shareholders' resolution. The Shareholders have approved the sale and transfer of the Business as set forth in Clause 2.1 by way of a shareholders' resolution. A copy of the shareholders' resolution is attached to this Agreement as **EXHIBIT 2.2.**

### 3 **SALE AND TRANSFER OF ASSETS**

3.1 Sale and Transfer. With effect as of the Date of Closing the Seller hereby sells and – subject to the fulfilment of the Initial Payment as of Clause 7.2 including the Seller's Operational Costs as of Clause 7.4 as a condition precedent - transfers to the Buyer and the Buyer hereby purchases and accepts such rights and titles and/or interest held or owned by the Seller in all such assets which or owned, used by or relate to the Business (**Assets**). Such Assets include, without limitation

- (a) all intellectual property rights, patents, utility models, registered designs, trade marks, copyrights, trade business and domain names, software rights, know-how and other intellectual property rights, applications for industrial property rights and user rights and of copyrights, rights to inventions, rights in respect of technical knowledge, developments and know-how, technical secrets, processes, formulae, data, together with all written representations of such assets such as written descriptions, pattern designs and plans, and any user rights and similar rights in respect of all aforementioned rights (collectively **IP Rights**), including those listed in **EXHIBIT 3.1(a)**;
- (b) all movable fixed assets, e.g. technical equipment, machinery, computers, furniture and further business equipment, including those listed in **EXHIBIT 3.1(b)**;
- (c) all inventories;
- (d) all receivables, including all receivables arising out or related to the Assigned Contracts and the benefit of all rights and claims which the Company has against third parties relating to the Business, including those receivables listed in **EXHIBIT 3.1(d)** and except for receivables in respect of Taxes and any receivables against the Subsidiary, which shall remain with the Seller;
- (e) the books, accounts, lists of customers and suppliers, credit reports, price lists, cost records, catalogues, advertising materials, documents of title and all other documents, papers and records (however stored),
- (f) all cash (*Kassenbestand*);
- (g) the goodwill including (without limitation) the exclusive right for the Buyer to represent itself as carrying on the Business in succession to the Seller under the name "art of defence" and any other trading names used in carrying on the Business;
- (h) all drawings, engineering data, manufacturing data, test data, quality control data relating to past, present and planned products or parts thereof, if any;
- (i) to the extent assignable, franchises, approvals, permits, licenses, orders, registrations, certificates and variances obtained from public authorities.

3.2 Possession. At the Date of Closing or as soon as reasonably practicable thereafter, the Seller shall grant to the Buyer physical possession to the Assets. For the period of time

between the Date of Closing and the Seller's granting of physical possession, the following shall apply:

- (a) Where the Assets are in the possession of the Seller, the Seller shall hold the Assets for the Buyer. For the avoidance of doubt: The passing of risk to the Buyer ("*Gefährübergang; Übergang von Besitz, Lasten und Nutzen*") shall be effected at the Date of Closing.
- (b) Where the Assets are in the possession of third parties, the Seller hereby agrees to notify such third parties to hold the Assets for the Buyer and hereby assigns to the Buyer its rights against such third parties with effect from and as of the Date of Closing.
- (c) If and to the extent, any acts or documents necessary or appropriate to effect the transactions contemplated under this Agreement have not yet been done or executed as of the date hereof for legal or factual reasons and upon request by either party, the Seller and the Buyer shall do all acts and sign, execute and deliver any document which are necessary or appropriate to effect the transfer to the Buyer of all rights and title of the Seller sold hereunder.

#### 4 ASSUMPTION OF LIABILITIES

- 4.1 Liabilities. Subject to the fulfilment of the Initial Payment as of Clause 7.2 including the Seller's Operational Costs as of Clause 7.4 as a condition precedent the Buyer hereby assumes the Assumed Liabilities set forth in Clause 4.2, but shall not assume the Excluded Liabilities set forth in Clause 4.3.
- 4.2 Assumed Liabilities. The Buyer shall assume all liabilities arising out or related to the Business and / or the Assigned Contracts and all liabilities and obligations which the Company has against third parties relating to the Business (collectively the Assumed Liabilities), except for the Excluded Liabilities set forth in Clause 4.3.
- 4.3 Excluded Liabilities. Except for the Assumed Liabilities pursuant to Clause 4.2, the Buyer shall not assume any Liabilities (the Excluded Liabilities), which shall include, but not be limited to, the liabilities set forth below:
  - (a) all liabilities to the Shareholders or any former shareholder;
  - (b) all liabilities to banks and other credit facility providers;
  - (c) all liabilities and obligations for Taxes relating to the Business that are attributable to periods before Closing;
  - (d) all liabilities, including, without limitation, all wages and salaries, sick pay, maternity pay, holiday pay, bonuses, 13th month bonuses, commission, any Tax liability arising out of or related to the employment of the employees who object to the transfer in accordance with Section 613a BGB;
  - (e) all liabilities, including, without limitation, all wages and salaries, sick pay, maternity pay, holiday pay, bonuses, 13th month bonuses, commission arising out of or related to the employment of the Transferred Employees due for payment (*zur Zahlung fällig*) prior to Effective Date; any Tax liability arising out of or related to the employment of the Transferred Employees relating to their employment prior to Effective Date, except for wage tax regarding May 2011



within the ordinary course of business which shall be borne by the Buyer if it is not already being paid until Closing.

- (f) for the avoidance of doubt: all liabilities incurred by the Subsidiary, unless such liabilities arise under the Assigned Contracts; and
- (g) all liabilities related arising out or related to the Proposed Transaction, in particular, any advisor's or lawyer's fee.

4.4 Indemnity. Notwithstanding any other provision of this Agreement, the Buyer shall not be liable for any Excluded Liabilities and the Seller shall retain and remain solely liable for and obligated to discharge and indemnify and hold the Buyer (following the Closing) harmless for all Excluded Liabilities. The foregoing indemnification provision is in addition to, and not in derogation of, any statutory remedy the Buyer may have. Notwithstanding any other provision of this Agreement, the Seller shall not be liable for any Assumed Liabilities and the Buyer shall be solely liable for and obligated to discharge and indemnify and hold the Seller (following the Closing) harmless for all Assumed Liabilities. The foregoing indemnification provision is in addition to, and not in derogation of, any statutory remedy the Seller may have.

## 5 TRANSFER OF CONTRACTS

5.1 Sale and Transfer. The Seller sells and – subject to the fulfillment of the Initial Payment as of Clause 7.2 including the Seller's Operational Costs as of Clause 7.4 as a condition precedent - transfers as of the Date of Closing by way of the assumption of contract with full discharge of the original contract party (*im Wege der Vertragsübernahme mit befreiender Wirkung*) all rights and obligations resulting from the contracts and contractual offers of the Business, including, but not limited to those set forth in EXHIBIT 5.1 (collectively the Assigned Contracts), but those set forth in EXHIBIT 5.1a under the condition precedent of the consent of the respective contractual party within 6 months after the Date of Closing (collectively the Conditional Contracts) and excluding those set forth in EXHIBIT 5.1b (collectively the Excluded Contracts).

5.2 Subsidiary's Assignment. The Subsidiary has assigned the Assigned Contracts to which it is a party as set forth in EXHIBIT 5.2.

5.3 Third Party Consent. As soon as possible after the Date of Closing, the Seller and the Buyer will jointly endeavour to obtain the consents from the respective other parties to the Assigned Contracts and the Conditional Contracts sold pursuant to Clause 5.1 required to transfer such Assigned Contracts and Conditional Contracts from the Seller to the Buyer.

5.4 Lack of Consent. If and to the extent it is not possible or impracticable to obtain the consent to the transfer of the Assigned Contracts (for the avoidance of doubt: This Clause 5.4 shall not apply to Conditional Contracts), the Seller will in respect of the external relationship (*im Außenverhältnis*) remain the party to the relevant Assigned Contract and the Parties will, for the purpose of their internal relationship (*im Innenverhältnis*), behave and treat each other as if the transfer had effectively taken place on the Date of Closing. In particular, (i) the Seller will follow the Buyer's instructions regarding the exercise of any rights under such Assigned Contracts, (ii) the Buyer shall indemnify the Seller against any liability under such Assigned Contracts that the Seller reasonably assumed pursuant to Clause 4.2 in the ordinary course of business and any liability of the Seller resulting from any instructions of the Buyer, (iii) the Seller agrees to use the care of a prudent businessman in holding such Assigned Contracts.

The Seller provides the Buyer with all relevant information it receives and if necessary asks for instructions from the Buyer. The Buyer will reimburse the Seller for all costs and expenses reasonably incurred in connection with this exercise, but excluding any internal costs of the Seller regarding the administration of such Assigned Contracts. If and to the extent the consent to transfer respective Assigned Contracts to the Buyer cannot be obtained within two (2) years after the Date of Closing, the Seller is entitled to terminate the respective Assigned Contract to the earliest possible date or with the consent of the contractual partner in its sole discretion. The Parties are aware that some of the Assigned Contracts contain provisions, such as the prohibition to sub-licensing, which could make it legally impossible to treat such Assigned Contracts as provided for above in this Clause. Therefore, any claims of the Buyer against the Seller and vice versa resulting from this fact are mutually excluded. This mutual exclusion of liability does, however, not apply in case a third party makes a successful claim against the Buyer.

- 5.5 For the avoidance of doubt: If the consent of a contractual party of a Conditional Contract is denied, no liability of the Seller will occur.
- 5.6 Guarantor hereby consents to the assumption of any and all rights and obligations of the Seller arising out of the contractual relationship between Guarantor and the Seller by the Buyer.
- 5.7 The Buyer and the Guarantor shall be obliged in the internal relationship to the Seller to observe any confidentiality obligations of the Seller set forth in any Assigned Contracts, Conditional Contracts and any other contracts provided within the Due Diligence.

## 6 EMPLOYEES

- 6.1 Transfer of Employees. The Parties acknowledge that the sale and transfer of the Business under this Agreement falls within the Scope of the Transfer of Undertakings Directive (No. 77/187/EEC) and the respective civil code regulation in Germany (Section 613a BGB) and therefore, pursuant to Section 613a BGB, the contracts of employment between the Seller and each of the employees of the Business listed in EXHIBIT 6.1 (Transferred Employees) shall be transferred to the Buyer with effect from Closing.
- 6.2 Seller's Indemnity. The Seller shall indemnify the Buyer from and against all losses, damages, costs or liabilities suffered or incurred by the Buyer in connection with:
- (a) any contract of employment of a person who is not listed in EXHIBIT 6.1 which is transferred to the Buyer pursuant to Section 613a BGB;
  - (b) any claims, including, without limitation, all wages and salaries, sick pay, maternity pay, holiday pay, bonuses, 13th month bonuses, commission arising out of or related to the employment of the Transferred Employees due for payment (*zur Zahlung fällig*) prior to Effective Date, including any Tax liability arising out of or related to the employment of the Transferred Employees relating to their employment prior to Effective Date, except for wage tax regarding May 2011 within the ordinary course of business which shall be borne by the Buyer if such wage tax is not already being paid prior to the Date of Closing;
  - (c) any claims, including any compensations, cost and expenses paid, resulting from any invalidity of termination of certain employees prior to the Date of Closing set forth in EXHIBIT 6.1; the aforesaid shall not apply and any claims have to be borne by the Buyer if any claim or the invalidity of a termination is caused by any

actions of the Buyer or the Guarantor or in charge of the Buyer or Guarantor after the Date of Closing; Clause 10.4 and 10.5 shall apply mutatis mutandis; and

- (d) any claims, including, without limitation, all wages and salaries, sick pay, maternity pay, holiday pay, bonuses, 13th month bonuses, commission, any Tax liability arising out of or related to the employment of the employees who object to the transfer in accordance with Section 613a BGB.

6.3 Information. The Seller will inform each of the Transferred Employees about the transfer of the employment relationship immediately after Date of Closing in the agreed form as attached hereto as **EXHIBIT 6.3** in each case in accordance with Section 613a(5) BGB.

## 7 CONSIDERATION

7.1 Consideration. The consideration for the purchase of Business shall be the payment to the Seller of:

- (a) the Initial Payment plus Seller's Operational Costs; and
- (b) the Deferred Payment.

7.2 Initial Payment. Upon Closing, the Buyer shall pay on account of part of the consideration, an amount equal to the Initial Payment to the Seller in accordance with Clause 7.1(a).

7.3 Deferred Payment. The Buyer shall pay, on the Deferred Payment Date and on account of part of the consideration, an amount equal to the Deferred Payment to the Seller in accordance with Clause 7.1(b).

7.4 Operational Costs. Upon Closing, the Buyer shall pay the Seller's Operational Costs to the Seller.

Modes of Payment. Any payments under this Agreement shall be made by wire transfer in immediately available funds, value as of the relevant due date set out in this Agreement, free of bank or other charges. Any payment to the Seller shall be made to the following bank account: Bank: Sparkasse Regensburg; Account Number: 840079735; Bank Code (BLZ): 750 500 00; IBAN: DE98 7505 0000 0840 0797 35; SWIFT-BIC: BYLADEM1RBG.

7.5 Interest. Any payments due under this Agreement shall bear interest from and including the respective due date to, but not including, the date of receipt. The interest rate to be used during any given period of three months, starting on the date on which any payment is due, shall be 500 basis points over EURIBOR for three-month deposits as reported on the first day of such three month period.

## 8 SET OFF

8.1 Save as provided in this Clause 8, all payments required from the Buyer to the Seller in respect of the Deferred Payment pursuant to Clause 7.1(b), shall be made in full without set off or deduction.

8.2 If on the Deferred Payment Date the Buyer shall have a claim or claims against the Seller under the Guarantees, and any such claim is a Determined Claim but the amount due in respect of such Determined Claim shall not have been paid to the Buyer prior to the

Deferred Payment Date, the Buyer shall be entitled to deduct from the Deferred Payment the Determined Amount of such claim or claims and to treat its obligation to pay the Deferred as being reduced, to the extent possible, by the amount deducted.

- 8.3 If and to the extent that on the Deferred Payment Date, the Buyer shall not have a Determined Claim, the Buyer shall on the Deferred Payment Date pay:
- (a) an amount of € 400,000 to the Seller; and
  - (b) the Escrow Amount into the Deferred Payment Escrow Account.
- 8.4 The Seller and the Buyer shall jointly instruct the bank at which the Deferred Payment Escrow Account is kept in writing to release any funds from the Escrow Amount:
- (a) to the Buyer in the Determined Amount (together with any interest which has accrued on such amount whilst it has been held in the Deferred Payment Escrow Account); or
  - (b) to the Seller on 1 June 2013, after deduction of the Determined Amount, if any, in case the Seller has not received a Claim Notice prior to such date; or
  - (c) to the Seller in case the Buyer's claim has been denied by final arbitral award.

## 9 GUARANTEES

- 9.1 Independent Guarantee (*selbständiges Garantieverprechen*). The Seller hereby guarantees to the Buyer by way of an independent guarantee (*selbständiges Garantieverprechen*) pursuant to Section 311 (1) of the German Civil Code (*Bürgerliches Gesetzbuch; BGB*) and not constituting a warranty of condition ("*Beschaffheitsgarantie*") within the meaning of Section 444 of the German Civil Code (*Bürgerliches Gesetzbuch; BGB*) ("Guarantee" or "Guarantees") that each of the Guarantees set forth in EXHIBIT 9 is true and correct as at the date of this Agreement and shall - unless otherwise stated in EXHIBIT 9 - continue to be true and correct up to and including the Date of Closing as if each Guarantee were repeated at the Date of Closing with reference to the facts and circumstances then existing, subject only to the limitations and qualifications set out in this Clause 9, in Clause 10 and in EXHIBIT 9.
- 9.2 Separate Guarantees. Each of the Guarantees shall be construed as a separate and independent Guarantee and, except where expressly stated, shall not be limited or restricted by reference to or inference from the terms of any other Guarantee or any other provision of this Agreement. The Guarantees shall not in any respect be extinguished or affected by Closing. If and to the extent that Damages suffered or incurred by Seller as the result of a Breach or any other obligation within that Agreement are duplicative such Damages shall not be recoverable more than once. No Party shall be entitled to claim any Damages, Taxes or other liabilities more than once in respect of the same matter (no "Double Dipping").
- 9.3 Legal Character of Guarantee. For the avoidance of doubt, the Seller shall be liable for any breaches of the Guarantees set forth in EXHIBIT 9 irrespective of any fault of the Seller (*verschuldensunabhängig*), unless the relevant Guarantee is given "to the Best Knowledge of the Seller", in which case the best knowledge standard as defined below in Clause 9.4 shall apply.

9.4 Best Knowledge. If and to the extent that any of the Guarantees of the Seller are made "to the Best Knowledge of the Seller", the Seller shall be deemed to have had such knowledge if, as of the date of this Agreement, the Managers had actual knowledge (*positive Kenntnis*) or could have obtained such knowledge after due inquiry applying the standard of care of a prudent businessman pursuant to Section 43 GmbHG (*fahrlässige Nichtkenntnis*).

## 10 REMEDIES FOR BREACH OF GUARANTEE

10.1 Damages. Subject to the provisions in this Clause 10, if any Guarantee of the Seller as qualified in Clause 9 and set forth in EXHIBIT 9 is not true, accurate or complete (a "Breach"), the Seller shall put the Buyer into such position it would be in if the Breach had not occurred. In the event that (i) such remediation in kind (*Naturalrestitution*) is not permitted by the nature of the Breach or (ii) the Breach has not been remedied by the Seller within a period of six (6) weeks after written request for such remediation by the Buyer, the Buyer shall be entitled to request from the Seller compensation in cash (*Schadensersatz in Geld*). The compensation in cash shall include payment of the amount of all losses (including, but not limited to, lost profits (*entgangener Gewinn*), costs and expenses (including, but not limited to, reasonable legal, accounting and other fees and expenses of professional advisors) and other damages (including, but not limited to, consequential damages (*Folgeschäden*) (collectively "Damages") which the Buyer would not have suffered or incurred if the respective Guarantee were true, accurate and complete.

10.2 Compensation of Benefits (*Vorteilsausgleich*). If the remediation in kind or the compensation in cash creates taxable income for the Buyer, the resulting Tax shall be added to the Damages. The value of any benefits received by the Buyer and / or Guarantor as a result of the Breach (including Tax benefits) shall be deducted from the Damages.

10.3 Claim Notice. If the Buyer becomes aware after Closing of any circumstances which indicate that there has been any Breach, the Buyer shall notify the Seller thereof in writing within thirty (30) days thereof (the "Claim Notice"). The Claim Notice shall state in reasonable detail the nature of the Breach and, to the extent practically possible, the estimated amount of Damages. For the avoidance of doubt, should the Buyer fail to comply with the above notification period, the liability of the Seller shall not be excluded but shall be reduced to the extent Damages, if any, resulted from the delay in notifying. Section 377 HGB shall not apply.

10.4 Third Party Claims. If the circumstances indicating the Breach include (i) the receipt by the Buyer of a written claim, complaint or equivalent document from a third party including without limitation any court or governmental authority or (ii) any notice to the Buyer of any audit or examination by any court or governmental authority, including Tax authorities (each a "Third Party Claim"), the Buyer shall provide to the Seller together with the Breach Notice or as soon as practical thereafter copies of all documents setting forth the Third Party Claim.

If the Seller unconditionally acknowledges (*anerkennt*) in writing to the Buyer that the circumstances on which the Third Party Claim is based constitute a Breach and that the Seller is liable towards the Buyer for such Breach, the Seller shall be entitled to control the defence against the Third Party Claim. In this case the Buyer shall provide to the Seller all relevant documents, other information and assistance reasonably required by the Seller for the defence. The Seller shall (i) keep the Buyer reasonably informed of the status of the defence, and (ii) comply with reasonable requests of the Buyer with respect

to the defence necessary to avoid a material adverse effect on significant business interests of the Buyer.

In the absence of such unconditional acknowledgment by the Seller the defence against the Third Party Claim shall be controlled by the Buyer. The Seller shall be allowed to participate in the defence at its own expense with its own advisors. Subject to its obligation to avoid or mitigate Damages (Section 254 BGB) the Buyer shall be free to acknowledge or settle the Third Party Claim if in its reasonable opinion such acknowledgement or settlement is in its best interest.

If and to the extent that the Seller has exercised control of the defence, the Seller shall indemnify and hold harmless the Buyer from and against any costs incurred by them for such defence.

- 10.5 Mitigation of Damages. The Buyer shall not be entitled to bring any claim under or in connection with this Agreement if and to the extent that either the Buyer, the Guarantor or their directors, employees, agents or their respective representatives have caused (*verursacht oder mitverursacht*) or aggravated the Breach of a Guarantee or any Damages resulting therefrom or failed to mitigate Damages pursuant to Section 254 BGB.
- 10.6 Exclusion of Liability. The Buyer shall not have a claim under or in connection with this Agreement if and to the extent that
- (a) the circumstances constituting the respective Breach have been disclosed by the Seller with reasonable clarity and specificity in this Agreement, including in particular any disclosures made against the Guarantees attached hereto as EXHIBIT 9.
  - (b) the circumstances constituting the respective Breach have been disclosed within the Due Diligence Information with reasonable clarity and specificity, provided that in case of specific disclosure within specific disclosure Exhibits of the catalogue of Guarantees in connection with a specific Guarantee, only these facts and circumstances are deemed to have been disclosed which are listed or briefed within the respective disclosure Exhibit;
  - (c) the Buyer, the Guarantor or their directors or their advisers were aware of circumstances constituting a Breach. Furthermore, Section 442 BGB shall not apply.
  - (d) Damages are recoverable under any insurance policies in favour of the Buyer.
- 10.7 Threshold Amount. The Seller shall only be liable for Damages if the aggregate amount of the liability of the Seller for all such claims exceeds € 20,000 (in words: Euro twenty thousand) in which event the Seller shall be liable for the whole amount of such claims and not only the excess over such amount.
- 10.8 Maximum Amount of Liability. In relation to all the Guarantees of EXHIBIT 9 the overall and total liability of the Seller is limited to a cash amount of € 200,000 (in words: Euro two hundred thousand).
- 10.9 Time Limitations. All claims of the Buyer for a Breach of a Guarantee contained in EXHIBIT 9 shall be time-barred 2 years after the Date of Closing.

The limitation period of the preceding sentence of this Clause 10.9 shall be suspended (*gehemmt*) pursuant to Section 209 BGB by Buyer's delivery of a Claim Notice to the Seller in accordance with Clause 10.3 with respect to the Breach notified in the Claim Notice for a period of three (3) months from the delivery of that Claim Notice. Section 203 BGB shall not apply.

- 10.10 Exclusion of Further Remedies. The remedies, which the Buyer may have against the Seller for Breach of any Guarantee shall solely be governed by this Agreement and shall - to the extent legally permissible - be the exclusive remedies available to the Buyer. Without limiting the generality of the aforesaid and unless this Agreement expressly provides otherwise, in particular, but without limitation, any right of the Buyer to reduce the consideration (*Minderung*) or to rescind (*Rücktritt*) from this Agreement or to require the winding-up of the transaction contemplated hereunder on any other legal basis (e.g. by way of *großer Schadenersatz*), and any claims for breach of pre-contractual obligations (*culpa in contrahendo* Sections 241 (2), 311 (2) (3) BGB), of ancillary obligations (*positive Forderungsverletzung*) and any claim for frustration of contract pursuant to Section 313 BGB (*Störung der Geschäftsgrundlage*) are hereby explicitly excluded. The above exclusions do not apply in the event of Sellers' wilful deceit (*arglistige Täuschung*) or intentional breach of contract (*vorsätzliche Vertragsverletzung*). In such cases also any limitation of liability under this Agreement shall not apply.

## 11 TAX INDEMNIFICATIONS

The Seller shall indemnify and hold harmless (*freistellen*) the Buyer from and against any Taxes relating to any periods ending on or before the Date of Closing, by paying an amount equal to the Taxes to the Buyer if and to the extent that such Taxes have not been fully paid on or prior to the Date of Closing and which become payable by the Buyer under applicable German law, including, but not limited to Section 75 AO. Exclusively, in the case of inability to perform by the Seller, in particular in case of bankruptcy, the Shareholders shall indemnify and hold harmless (*freistellen*) the Buyer as defined above; however, S-Refit, TBB, Clusterfonds and KfW each limited to any distribution, even hidden distribution ("*verdeckte Gewinnausschüttungen*"), or other payments by the Seller to the respective Shareholder including, but not limited to, any payments on shareholders' loans (including loans of any Affiliates), being paid to the respective Shareholder. Any claims of the Buyer under this Clause 11 shall be time-barred 6 (six) months after the final and binding assessment (*bestandskräftige Festsetzung*) of the relevant Taxes.

## 12 SHAREHOLDERS' INDEMNITY / BUYER'S AND GUARANTOR'S INDEMNITY

- 12.1 The Shareholders shall indemnify and hold harmless (*freistellen*) against any Damages, resulting from a violation or breach of any of the following representations:

(a) Due Authorisation

The Seller has the legal right and full power and authority to enter into and perform this Agreement. All required approvals, if any, of any corporate bodies of the Seller have been obtained.

(b) No Violation

The execution and delivery of and the performance by the Seller will not result in a (i) breach of any provision of the constitutional documents of the Seller or (ii) breach of any order, judgement or decree of any court, governmental agency or

regulatory body by which the Seller is bound, that effects a failure of transfer of title in the Assets to the Buyer.

(c) Legal, Valid and Binding Obligation

This Agreement and all other documents in connection with this Agreement will constitute legal, valid, and binding obligations of the Seller.

(d) No Insolvency

As of the date hereof, no insolvency or similar proceedings have been opened over the assets of the Seller, and there are no circumstances that would require or justify the opening of or application for such proceedings. The Seller is neither illiquid (*zahlungsunfähig*) nor over-indebted (*überschuldet im insolvenzrechtlichen Sinn*).

12.2 The Buyer and the Guarantor shall indemnify and hold harmless (*freistellen*) against any Damages, resulting from a violation or breach of any of the following representations:

(a) Due Authorisation

The Buyer and the Guarantor have the legal right and full power and authority to enter into and perform this Agreement. All required approvals, if any, of any corporate bodies of the Buyer and the Guarantor have been obtained.

(b) No Violation

The execution and delivery of and the performance by the Buyer and the Guarantor will not result in a (i) breach of any provision of the constitutional documents of the Buyer and the Guarantor or (ii) breach of any order, judgement or decree of any court, governmental agency or regulatory body by which the Buyer or the Guarantor are bound, that effects a failure of transfer of title in the Assets to the Buyer.

(c) Legal, Valid and Binding Obligation

This Agreement and all other documents in connection with this Agreement will constitute legal, valid, and binding obligations of the Buyer and the Guarantor.

(d) No Insolvency

As of the date hereof, no insolvency or similar proceedings have been opened over the assets of the Buyer and / or the Guarantor, and there are no circumstances that would require or justify the opening of or application for such proceedings. The Buyer and the Guarantor are neither illiquid (*zahlungsunfähig*) nor over-indebted (*überschuldet im insolvenzrechtlichen Sinn*).

13 PARENT GUARANTEE

Guarantor herewith guarantees by way of a independent, irrevocable, unconditional guarantee including – if applicable – the waiver of any benefit of discussion (*Einrede der Vorausklage*) towards the Seller that all liabilities of the Buyer set forth in this Agreement, including, but not limited to the Initial Payment including the Seller's Operational Costs and the Deferred Payment, and towards the Managers that all



obligations under the respective employment agreements as attached hereto as **EXHIBIT 15.3b** will be performed and fulfilled.

#### 14 **NON-COMPETE; NON-SOLICITATION**

14.1 Non-compete. For a period of one (1) year from the Date of Closing, the Seller and each of the Managers shall refrain from and shall procure that the Seller's Affiliates refrain from:

- (a) engaging, directly or indirectly, in the design, distribution and sale of web application security technology if and to the extent that such products or services are delivered or rendered, directly or indirectly, to customers located in countries where the Buyer has customers (any of such business activities a "Competing Activity"); or
- (b) holding, directly or indirectly, any equity interest in any legal entity engaging, directly or indirectly, in any Competing Activity;
- (c) selling or otherwise making available, directly or indirectly, to any individual person or legal entity engaging, directly or indirectly, in any Competing Activity any know-how or other elements of goodwill, trade secrets or other information of a confidential nature of the Seller.

For the avoidance of doubt, the non-compete of sentence 1 lit (a) shall also include the granting of a license or the granting of any other support in relation to a Competing Activity.

14.2 Penalty. In addition to any other remedies available to the Buyer under this Agreement or applicable law, the Seller or the respective Manager, as the case may be, shall pay to the Buyer irrespective of fault a penalty of € 20,000 (in words Euro twentythousand) for each individual breach of any obligations set out in Clause 14.1. If a breach by the Seller or the respective Manager continues for more than thirty (30) days despite of the receipt of a written notice ("Abmahnung"), such continuation shall be regarded as a new and separate breach within the meaning of this Clause 14.1.

14.3 Non-solicitation. For a period of two (2) years from the Date of Closing, the Seller and each of the Shareholders shall refrain from

- (a) influencing or attempting to influence any customer, supplier, consultant or other third party maintaining a contractual or other business relationship with the Buyer to terminate or discontinue such relationship or to reduce the volume of goods or services provide thereunder, or
- (b) soliciting or attempting to solicit the service or employment of any current or future director, officer or employee of the Buyer.

Clause 14.2 shall apply *mutatis mutandis*, provided that the penalty for each case of breach by the Seller or any respective Shareholder of the obligations in this Clause 14.3 shall be € 20,000 (in words Euro twentythousand).

14.4 Injunctive Relief. The Parties acknowledge and agree that in the case of a breach by the Seller or any respective Shareholder of the obligations in this Clause 14.1 and 14.3, the remedies available to the Buyer under this Agreement may not be sufficient to indemnify the Buyer fully against all damage, and that therefore the Buyer shall be entitled to

enforce any claims for specific performance (*Unterlassungs- und Beseitigungsansprüche*) by injunctive relief (*einstweiliger Rechtsschutz*).

14.5 Validity. The restrictions contained in this Clause 14.1 to 14.4 are considered to be reasonable by the Seller and by the Shareholders in all respects, but if any of those restrictions shall be held to be void in the circumstances where it would be valid if some part were deleted, amended or period of time reduced, the Parties agree that such restrictions shall apply with such deletion or amendment as may be necessary to make it valid and effective.

14.6 Enforceability. The provisions of Clauses 14.1 and 14.3 are separate and severable and shall be enforceable accordingly.

## 15 CLOSING

15.1 Closing Conditions. The obligations of the Parties to take the actions set out in Clause 15.3 shall be subject to each of the following conditions having been fulfilled:

- (a) the resolution in the agreed form being passed at an extraordinary general meeting of the Guarantor (or at any adjournment thereof) approving (inter alia) the Proposed Transaction; and
- (b) the resolution in the agreed form of the Shareholders and of the board of the Seller approving the Proposed transaction.

15.2 Date of Closing. Closing shall take place at the offices of the Buyer's Solicitors in Berlin, Unter den Linden 14, 10117 Berlin on 7 June 2011 immediately after signature of this agreement or at any time or place the Parties have mutually agreed on in writing (Date of Closing).

15.3 Closing Actions. At Closing, the following actions shall be taken simultaneously (*Zug um Zug*):

The existing service agreements between both Dr Heß and the Seller and Mr Meisel and the Seller will be mutually terminated substantially in the form attached hereto in EXHIBIT 15.3a and new employment agreements between the Buyer and the Managers will be entered into substantially in the form attached hereto in EXHIBIT 15.3b.

15.4 Initial Payment. Upon completion of the matters referred to in Clauses 15.3, the Buyer will pay the Initial Payment and the Seller's Operational Costs by telegraphic transfer to the Seller.

15.5 Closing Confirmation. After all Closing Actions have been taken or waived and following the Seller's receipt of the Initial Cash Payment, the Parties shall confirm in a written document substantially in the form attached to this Agreement as EXHIBIT 15.5 that Closing has occurred (Closing Confirmation). The signed Closing Confirmation shall be attached to this Agreement. For the avoidance of doubt, the legal effect of the Closing Confirmation shall be limited to serving as evidence that all Closing Actions have been taken or waived and that the Closing has occurred, but the execution of the Closing Confirmation shall not limit or prejudice the rights of the Parties arising under this Agreement or under applicable law.

## 16 POST CLOSING OBLIGATIONS

- 16.1 General. At any time after the Date of Closing, the Seller and the Buyer shall (and shall use its reasonable endeavours to procure that any necessary third party shall) sign and execute all such documents and do all such acts and things as the Buyer and the Seller may require for effectively transferring the Business including the Assets, Assumed Liabilities, Assigned Contracts and Transferred Employees within the meaning of Clauses 3 to 6 to the Buyer and otherwise giving the Buyer the full benefit of all the provisions of this Agreement.
- 16.2 Information. The Seller shall following the Date of Closing
- (a) provide all such information relating to the Business within its custody, possession or control as the Buyer shall request;
  - (b) promptly pass on to the Buyer all enquiries and orders relating to the Business which the Seller may receive.
- 16.3 IP Rights. Immediately after Closing Seller and Buyer will jointly endeavour to assign the registration of all IP Rights and corresponding applications for the IP Rights to the Buyer and the Seller and the Buyer shall undertake any further measures and make all declarations necessary and useful in order to deliver the IP Rights to the Buyer and enable the Buyer to use the IP Rights as of the Date of Closing.
- 16.4 No insolvency. The Shareholders shall procure that the liquidity that the Seller will receive as Initial Payment plus the Seller's Operational Costs shall remain in funds of the Seller for at least three (3) months after the Date of Closing. Within that period, no distributions, even hidden distributions ("*verdeckte Gewinnausschüttungen*"), or other payments by the Seller to the Shareholders including, but not limited to, any payments on shareholders' loans (including loans of any Affiliates) shall occur. If any distribution, even hidden distribution ("*verdeckte Gewinnausschüttungen*"), or other payments by the Seller to the Shareholders including, but not limited to, any payments on shareholders' loans (including loans of any Affiliates) occur after the aforesaid three (3) months period but before the end of a period of twelve (12) months after the Date of Closing, the respective Shareholder is obliged to repay to the Seller that amount of liquidity which such Shareholder or its Affiliate received, if and to the amount necessary to avoid an insolvency of the Seller.
- 16.5 Seller's Name. The Shareholders shall rename the Seller and file the respective application to the trade register as soon as practically possible, but at the latest within a period of one month after the Date of Closing, so that the Seller is no longer the named "art of defence" or similar after such period. The Seller shall procure that the Subsidiary will as soon as practically possible be renamed or wound up, so that the Subsidiary is no longer named "art of defence" or similar after such period.

## 17 CONFIDENTIALITY

- 17.1 General. The Seller shall not at any time after the Date of Closing use or disclose or permit there to be disclosed any Confidential Business Information which it has or acquires PROVIDED THAT this Clause shall not apply if and to the extent that:
- (a) such Confidential Business Information has ceased to be confidential or come into the public domain (other than as a result of breach of any obligation of confidence by any of the Seller or any of their respective Affiliates); or