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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MAN MACHINE INTERFACE
TECHNOLOGIES, LLC, a California
corporation,

Plaintiff,

vs.

DELL INC., a Delaware corporation,

Defendant.

AND RELATED COUNTERCLAIMS.

) Case No.: CV 11-03067-DMG (VBKx)
) [Honorable Dolly M. Gee]

) **STIPULATED CONFIDENTIAL
PROTECTIVE ORDER**

) **DISCOVERY MATTER**

) Complaint Filed: April 12, 2011

ORDER

For good cause showing, it appears to the satisfaction of the Court that this is a proper case for the entry of a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, to protect the confidential information of Plaintiff and Counter-Defendant MAN MACHINE INTERFACE TECHNOLOGIES, LLC (“Plaintiff”), Defendant and Counterclaimant DELL INC. (“Defendant”) and nonparties, including nonparty witnesses as may be necessary during the litigation of this case.

1 1. In the course of this litigation any party or non-party who produces or is
2 caused to produce discovery may designate as “Protected Information” all or any part
3 of any discovery and other materials exchanged by the parties or filed with the Court,
4 including without limitation, documents and things, pleadings, motions, interrogatory
5 answers, answers to deposition questions, and responses to requests for admission,
6 which contain (a) confidential, competitively sensitive, proprietary, financial, patent,
7 trademark, copyright, trade secret, marketing, customer, research, or product
8 development information used in or relating to such party’s business that is believed
9 to be unknown or unavailable to the public; and (b) any other document or thing
10 containing other information of such a nature as to be protectable under Rule
11 26(c)(i)(G) of the Federal Rules of Civil Procedure. For any Protected Information,
12 the procedures set forth herein shall be employed, and the disclosure shall be subject
13 to this Stipulated Confidentiality Protective Order (“Protective Order”).

14 2. This Protective Order establishes two categories of Protected
15 Information. Information in category one is referred to as “Category One
16 CONFIDENTIAL INFORMATION”. Information in category two is referred to as
17 “Category Two CONFIDENTIAL INFORMATION”.

18 3. Only information that concerns the producing party’s trade secret
19 information, costs of sales information, ongoing business plans, future business
20 plans, future products, or other information of which the producing party has a good-
21 faith basis to believe deserves a higher level of protection, shall be categorized as
22 “Category One Counsel Only Confidential Information”. All other Protected
23 Information shall be categorized as “Category Two Confidential Information”.

24 4. Any document or other tangible thing that contains Protected
25 Information shall be labeled “Category One” or “Category Two CONFIDENTIAL
26 INFORMATION”, or markings of like import. For a document, such marking shall
27 appear on each page of the document that contains Protected Information. Any
28 document or other tangible thing so labeled and the information it contains or reveals
shall be treated in accordance with the provisions of this Protective Order and Local

1 Rule 79-5.1. Any Protected Information not reduced to documentary or physical
2 form or which cannot be conveniently labeled shall be so designated by the party by
3 serving a written notification on the receiving party. In the case of responses to
4 interrogatories, other discovery requests or responses, affidavits, briefs, memoranda,
5 or other papers filed with the Court, information contained therein may be designated
6 as Protected Information in accordance with Local Rule 79-5.1 by prominently
7 marking such “Category One CONFIDENTIAL INFORMATION” or “Category
8 Two CONFIDENTIAL INFORMATION”, or a marking of like import.
9 Notwithstanding such designations, Protected Information does not include
10 information obtained from sources other than a party to this litigation. The
11 designation of deposition transcripts shall be governed by Paragraph 11.

12 5. When a party produces documents for inspection, no marking need be
13 made by the producing party in advance of the inspection. For purposes of the
14 inspection, all documents shall be treated as containing “Category One
15 CONFIDENTIAL INFORMATION”. After the receiving party selects specified
16 documents for copying, the producing party shall appropriately mark the copies of
17 the selected documents before they are provided to the receiving party.

18 6. Protected Information shall be revealed only to appropriate Qualified
19 Persons (defined in Paragraphs 7 and 8 below), their clerical, support and secretarial
20 staffs, paralegals, and assistants and used only for preparation and trial of this action.

21 7. Without prior written consent of the designating Party, no Protected
22 Information materials (either original or copy) designated as “Category One
23 Confidential Information” and no information contained therein, including any
24 summaries made of such information, may be disclosed to any person other than to
25 the following Qualified Persons:

- 26 (a) Counsel for any named party in Civil Action No. CV11-03067-
27 DMG (VBKx) and their members and associate attorneys, paralegals and staff;
28 (b) A maximum of two management representatives of each party

1 who shall be identified in writing to all other parties;

2 (c) Subject to Paragraphs 9 and 10 below, experts and third party
3 technical service contractors who are not presently employees of either party,
4 or of any predecessor, parent or related company of either party, who are
5 requested by counsel for the receiving party to furnish technical or expert
6 services or testimony in connection with this litigation.

7 (d) Third party contractors involved solely in providing litigation
8 support services, including but not limited to non-technical jury or trial
9 consultants.

10 (e) The Court and its personnel whose duties require access to such
11 materials.

12 (f) An officer before whom a deposition is taken, including court
13 reporters and other persons involved in recording deposition testimony in this
14 action by stenographic reporting or any other means.

15 (g) Any person who originally authored the document or previously
16 received information or that document in the ordinary course of business but is
17 not presently in possession of that document.

18 (h) Witnesses deposed in this action under the following
19 circumstances: (1) any witness may be shown "Protected Information" in
20 which the witness is identified as the originator, signatory, author, addressee,
21 or recipient; and (2) any party selected by the designating party to provide
22 testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

23 (i) Any other person agreed to in writing by the producing party or
24 allowed through Court order.

25 8. In addition to the Qualified Persons of Paragraph 7, materials designated
26 as "Category Two Confidential INFORMATION" may be disclosed to employees or
27 agents of the receiving party to whom disclosure is reasonably necessary for this
28 litigation.

1 9. Before any disclosure of Protected Information is made to an individual
2 pursuant to Paragraphs 7(b), (c), (f), (g) and (h), counsel for the receiving party shall:
3 provide the individual with a copy of this Order; explain its terms; and obtain from
4 the individual a declaration in the form of **Attachment A** hereto to comply with and
5 be bound by its terms. A copy of each declaration in the form of **Attachment A**
6 shall be provided to the producing party.

7 10. No Protected Information shall be shown to an expert or third party
8 technical service contractor pursuant to Paragraph 7 until ten (10) days after the
9 receiving party identifies the individual in writing to the producing party and
10 provides the producing party with an executed **Attachment A** and a curriculum
11 vitae. If the producing party, within ten (10) days of its receipt of written notice and
12 an executed **Attachment A**, objects to such individual having access to any
13 Protected Information, the individual shall be barred from such access for a thirty
14 (30) day period commencing with the receipt by the producing party of a copy of the
15 executed **Attachment A**. Within that thirty (30) day period, the parties shall meet
16 and confer to resolve any such objections. If within that thirty (30) day period (i) the
17 parties are unable to resolve their differences and (ii) the opposing party moves for a
18 further Protective Order, then the Protected Information shall not be provided to said
19 individual except by further order of the Court.

20 11. In connection with the taking of depositions in this action:

21 (a) Testimony or information disclosed at a deposition may be
22 designated by a party or a non-party witness as Protected Information by
23 indicating on the record at the deposition the specific testimony which
24 contains Protected Information that is to be made subject to the provisions of
25 this Order and shall be treated as such.

26 Alternatively, a party or a non-party witness may designate testimony or
27 information disclosed at a deposition as Protected Information by notifying the
28 other parties, in writing, within thirty (30) days of receipt of the transcript of

1 the deposition, of the specific pages and lines of the transcript that are to be
2 designated as Protected Information. Each party or non-party witness shall
3 attach a copy of such written statement to the face of the transcript and each
4 copy thereof in its possession, custody, or control.

5 Whether or not designation is made at the time of a deposition, all
6 depositions shall be treated as Confidential Information from the taking of the
7 deposition until thirty (30) days after receipt of the transcript, or until receipt
8 of the notice referred to in this subparagraph, whichever occurs sooner.

9 (b) Only Qualified Persons under Paragraph 7 above, the deponent,
10 and the court reporter shall be allowed to attend or have access to any portion
11 of a deposition in which Category One CONFIDENTIAL INFORMATION is
12 used or elicited from a deponent.

13 (c) If a party or non-party witness designates information as
14 Protected Information on the record at a deposition, the court reporter, to the
15 extent possible, shall segregate into separate transcripts information designated
16 as Protected Information from information not so designated. The page
17 numbers of the separate transcripts shall be consecutive so as to permit the
18 pages to be merged into a complete transcript at the time of trial or as the
19 Court may direct.

20 12. Nothing in this Order shall bar or otherwise restrict any counsel from
21 rendering legal advice to his or her client with respect to this litigation and, in the
22 course thereof, relying upon his or her examination of Protected Information.

23 13. (a) The good faith designation of Protected Information shall,
24 without further proof, entitle such material to the protection of this Protective Order.
25 If such designation is questioned by any other party, then this Protective Order shall
26 be without prejudice to the right of either party to bring before the Court the question
27 of whether same is or is not of a suitable confidential nature.

28 (b) Inadvertent disclosure of Protected Information, without identifying the

1 same as confidential, shall not be deemed a waiver of confidentiality with regard to
2 similar or related information nor shall it be deemed a waiver of confidentiality with
3 regard to the information inadvertently disclosed, if called to the attention of trial
4 counsel for the receiving party promptly.

5 14. The filing of any document containing Protected Information shall be
6 governed by paragraph 9 of the Court's Standing Order dated November 15, 2010.

7 15. Within sixty (60) days of termination of this litigation, including any
8 and all appeals therefrom, attorneys for the receiving party shall destroy all Protected
9 Information received hereunder. All copies of Protected Information received by
10 others hereunder shall also be destroyed, except for any Protected Information
11 contained within Court filings and retained by the Court. Notwithstanding the
12 foregoing, counsel for the receiving party may retain a copy of Protected Information
13 of a producing party, to the extent reflected or contained in such counsel's work
14 product or in materials filed with the Court. Counsel, however, may retain such
15 materials for their own reference and may not use them for any other purpose or
16 disclose them to any other person.

17 16. Prompt written notice shall be given to any party who produced
18 Protected Information hereunder, in the event that party's Protected Information is
19 sought by any person not a party to this litigation, by subpoena in another action or
20 by service with any legal process or order. Such notice shall include a copy of such
21 subpoena, legal process or order. Any persons seeking such Protected Information
22 who take action to enforce such subpoena or other legal process shall be apprised of
23 this Protective Order. Nothing herein shall be construed as requiring anyone covered
24 by this Protective Order to contest a subpoena or other process, to appeal any order
25 requiring production of Protected Information covered by this Protective Order or to
26 subject itself to penalties for non-compliance with any legal process or order.

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1 IT IS SO ORDERED.

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3 Dated: September 19, 2011

_____/s/_____

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U. S. Magistrate Judge

5 Submitted by:

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Attachment A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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MAN MACHINE INTERFACE
TECHNOLOGIES, LLC, a California
corporation,

Plaintiff,

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DELL INC., a Delaware corporation,

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AND RELATED COUNTERCLAIMS

) Case No.: CV 11-03067-DMG (VBKx)

) [Honorable Dolly M. Gee]

) **DISCOVERY MATTER**

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, hereby acknowledge that I am about to receive Protected Documents and information as defined in the Stipulated Protective Order agreed to by the parties and entered by the Court in this case. I acknowledge also that the Protected Documents and information are being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order, that I have been given a copy of the order, that I have read it and that I understand my obligations under it.

1 I hereby agree to be bound by the terms of the Stipulated Protective Order and
2 to treat all Protected Documents and information, including any copies or notes
3 relating thereto, in accordance with the terms of the Stipulated Protective Order and
4 to disclose those materials to, or discuss with the content of those materials with,
5 only those persons permitted by the Stipulated Protective Order to receive such
6 material.

7 I further agree to return on request all materials containing Protected
8 Documents and information, copies thereof, and notes that I have prepared relating
9 thereto, to outside counsel for the party by whom, or on whose behalf, I have been
10 am retained.

11 I hereby submit to the jurisdiction of the U.S. District Court for the Central
12 District of California for the purpose of enforcement of the Stipulated Protective
13 Order and, solely for that purpose, I waive any and all objections to jurisdiction and
14 venue in that court.

15 I declare under penalty of perjury under the laws of the State of California and
16 of the United States that the foregoing is true and correct and that this agreement was
17 executed by my hand on _____ at _____.

18
19 _____
Signature
20 _____
Printed Name
21 _____
Company Name
22 _____
Address
23 _____
Phone
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