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14 (Continued on next page)

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 MICROSOFT CORPORATION,
 FISERV, INC., INTUIT INC., and
 JACK HENRY & ASSOCIATES, INC.

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

18 ENFISH, LLC,
 19
 20 Plaintiff,
 21
 22 v.
 23 MICROSOFT CORPORATION;
 24 FISERV, INC.; INTUIT INC.; SAGE
 25 SOFTWARE, INC.; and JACK
 26 HENRY & ASSOCIATES, INC.,
 27
 28 Defendants.

AND RELATED COUNTERCLAIMS.

Case No. CV12-7360 MRP
 (MRWx)

STIPULATED PROTECTIVE ORDER

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SAGE SOFTWARE, INC.

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this Litigation are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this Litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 This Order does not confer blanket protections on all disclosures or responses to
8 discovery, and the protection it affords extends only to the limited information or
9 items that are entitled under the applicable legal principles to treatment as
10 confidential.

11 **II. DEFINITIONS**

12 1. This Litigation or the Litigation: Case Number CV12-7360 MRP
13 (MRWx), for so long as the case may be pending in the United States District Court
14 for the Central District of California or any appellate court, regardless of whether
15 any individual parties to the case settle or are dismissed, and any case that is
16 consolidated with or arises from the aforementioned case. This definition is the
17 same for and shall be identically construed as to all past, present, or future parties to
18 the case.

19 2. Party: any party to this Litigation.

20 3. Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner generated, stored, or maintained (including, among other
22 things, testimony, transcripts, or tangible things) that are produced or generated in
23 disclosures or responses to discovery in this matter.

24 4. “CONFIDENTIAL” Information or Items: information (regardless of
25 how generated, stored or maintained) or tangible things that qualify for protection
26 under standards developed under Fed. R. Civ. P. 26(c).

27 5. “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY”
28 Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items

1 whose disclosure to another Party or non-Party would create a substantial risk of
2 serious injury that could not be avoided by less restrictive means.

3 **6.** “HIGHLY CONFIDENTIAL – SOURCE CODE”: extremely sensitive
4 Confidential Information or Items representing computer code and associated
5 comments and revision histories, the disclosure of which to another Party or non-
6 Party would create a substantial risk of serious harm that could not be avoided by
7 less restrictive means.

8 **7.** Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 **8.** Producing Party: a Party or non-Party that produces Disclosure or
11 Discovery Materials in this Litigation.

12 **9.** Designating Party: a Party or non-Party that designates Disclosure or
13 Discovery Materials produced in this Litigation as “CONFIDENTIAL,” “HIGHLY
14 CONFIDENTIAL – COUNSELS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
15 – SOURCE CODE.”

16 **10.** Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – COUNSELS’
18 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” as well as all
19 copies, excerpts, summaries, or compilations thereof. Public documents or publicly
20 available information may not be designated as Protected Material.

21 **11.** Outside Counsel: attorneys who are not employees of a Party but who
22 are retained to represent or advise a Party in this Litigation, as well as their
23 employed paralegals, secretaries, and other administrative support staff.

24 **12.** In-house Counsel: attorneys who are employees of a Party, as well as
25 their employed paralegals, secretaries, and other administrative support staff.

26 **13.** Counsel (without qualifier): Outside Counsel and In-house Counsel (as
27 well as their support staffs).

28 **14.** Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the Litigation who has been retained by a Party or its counsel to serve
2 as an expert witness or as a consultant in this Litigation.

3 **15. Professional Vendors:** persons or entities that provide litigation
4 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
5 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
6 and their employees and subcontractors. This definition includes a professional
7 jury or trial consultant retained in connection with this Litigation.

8 **16. Final Disposition:** the date of the final, legal conclusion of this
9 Litigation with respect to all Parties thereto, whether by entry of a final, non-
10 appealable judgment, by voluntary dismissal(s), or by settlement(s). The Final
11 Disposition shall be the same date for all Parties, regardless of whether the
12 Litigation is legally concluded as to an individual Party on an earlier date.

13 **III. SCOPE**

14 The protections conferred by this Order cover not only Protected Material (as
15 defined above), but also any information copied, excerpted, or extracted therefrom,
16 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
17 conversations, or presentations by Parties or Counsel to or in court or in other
18 settings that might reveal Protected Material.

19 **IV. DURATION**

20 Even after the Final Disposition in this Litigation, the confidentiality
21 obligations imposed by this Order shall remain in effect until a Designating Party
22 agrees otherwise in writing or a court order otherwise directs.

23 **V. DESIGNATING PROTECTED MATERIAL**

24 **1. Manner and Timing of Designations.** Except as otherwise provided in
25 this Order, or as otherwise stipulated or ordered, material that qualifies for
26 protection under this Order must be clearly so designated before the material is
27 disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix the legend “CONFIDENTIAL,”
4 “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY,” or “HIGHLY
5 CONFIDENTIAL – SOURCE CODE” at the top or bottom of each page that
6 contains Protected Material.

7 A Party or non-Party that makes original documents or materials
8 available for inspection need not designate them for protection until after the
9 inspecting Party has indicated which material it would like copied and produced.
10 During the inspection and before the designation, all of the material made available
11 for inspection shall be deemed “HIGHLY CONFIDENTIAL – COUNSELS’ EYES
12 ONLY,” unless it includes Source Code, in which case it will be governed by
13 Section VIII below. After the inspecting Party has identified the documents it
14 wants copied and produced, the Producing Party must determine which documents
15 qualify for protection under this Order, then, before producing the specified
16 documents, the Producing Party must affix the appropriate legend
17 (“CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY”
18 or “HIGHLY CONFIDENTIAL – SOURCE CODE”) at the top or bottom of each
19 page that contains Protected Material.

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, Parties or non-Parties providing testimony may designate deposition
22 transcripts, or portions thereof, as Protected Material by indicating the appropriate
23 designation on the record before the close of the deposition, hearing, or other
24 proceeding, or by notifying the court reporter and all counsel in writing of the
25 appropriate designation within fourteen (14) business days after receiving the
26 transcript, during which fourteen (14) day period the deposition transcript shall be
27 treated as HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY.

28 Transcripts containing Protected Material shall have an obvious legend

1 on the title page that the transcript contains Protected Material, and the title page
2 shall be followed by a list of all pages (including line numbers as appropriate) that
3 have been designated as Protected Material and the level of protection being
4 asserted by the Designating Party. The Designating Party shall inform the court
5 reporter of these requirements. Any transcript that is prepared before the expiration
6 of a 14-day period for designation shall be treated during that period as if it had
7 been designated “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY” in its
8 entirety unless otherwise agreed. After the expiration of that period, the transcript
9 shall be treated only as actually designated.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party must either affix in a
12 prominent place on the exterior of the container or containers or media in which the
13 information or item is stored and/or produced the legend “CONFIDENTIAL,”
14 “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY” or “HIGHLY
15 CONFIDENTIAL – SOURCE CODE” or, if that is not practicable, use other
16 reasonable efforts to communicate the designation to the Receiving Party, in
17 writing.

18 (d) for information or items produced by non-parties (e.g.,
19 documents obtained by third-party subpoenas), the non-Party shall determine in
20 accordance with this Protective Order whether the information should be designated
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY”
22 or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information disclosed
23 by any non-Party will be given the same protection as information disclosed by any
24 Party to this Litigation, and will be subject to the same procedures as those
25 governing disclosure of the Parties’ “CONFIDENTIAL,” “HIGHLY
26 CONFIDENTIAL – COUNSELS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
27 – SOURCE CODE” information pursuant to this Protective Order.

28 **2. Inadvertent Failures to Designate.** A Designating Party that

1 inadvertently fails to mark information or items as “CONFIDENTIAL,” “HIGHLY
2 CONFIDENTIAL – COUNSELS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
3 – SOURCE CODE” at the time of production shall be allowed to correct such
4 failure at any time. In that event, the Designating Party shall provide notice in
5 writing to all Receiving Parties, accompanied, as necessary, by appropriately
6 marked substitute copies of such information or items. Upon receipt of such notice,
7 a Receiving Party will take appropriate steps to assure that the previously unmarked
8 information or items are treated as Protected Material in accordance with the
9 provisions of this Order, including retrieving and returning or destroying all
10 previously unmarked or mismarked copies of the information or items. To the
11 extent the Receiving Party has already disclosed such information, such disclosure
12 shall not be a violation of this Protective Order, but the Receiving Party shall
13 promptly collect any copies of disclosed material that have been provided to
14 individuals other than those authorized under this Protective Order, and shall
15 destroy or return them to the Producing Party.

16 **3. De-Designating Material for Protection.** If it comes to a Designating
17 Party’s attention that information or items that it designated for protection do not
18 qualify for protection, in whole or in part, that Party or non-Party must promptly
19 notify all other parties that it is withdrawing the mistaken designation.

20 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 **1. Timing of Challenges.** Unless a prompt challenge to a Designating
22 Party’s confidentiality designation is necessary to avoid foreseeable substantial
23 unfairness, unnecessary economic burdens, or a later significant disruption or delay
24 of the Litigation, a Party does not waive its right to challenge a confidentiality
25 designation by not mounting a challenge promptly after the original designation is
26 disclosed.

27 **2. Meet and Confer.** The party challenging a designation shall initiate the
28 dispute resolution process by providing written notice of each designation it is

1 challenging and describing the basis for each challenge. To avoid ambiguity as to
2 whether a challenge has been made, the written notice must recite that the challenge
3 to confidentiality is being made in accordance with this specific paragraph of the
4 Protective Order. The parties shall attempt to resolve each challenge in good faith
5 and must begin the process by conferring directly (in voice to voice dialogue; other
6 forms of communication are not sufficient) within 10 days of the date of service of
7 notice. In conferring, the Challenging Party must explain the basis for its belief that
8 the confidentiality designation was not proper and must give the Designating Party
9 an opportunity to review the designated material, to reconsider the circumstances,
10 and, if no change in designation is offered, to explain the basis for the chosen
11 designation. A Challenging Party may proceed to the next stage of the challenge
12 process only if it has engaged in this meet and confer process first or establishes
13 that the Designating Party is unwilling to participate in the meet and confer process
14 in a timely manner.

15 **3. Judicial Intervention.** If the parties' dispute is not resolved through the
16 meet-and-confer process, the challenging Party may, following the procedures set
17 forth in Local Rule 37, file a motion that identifies the challenged material and sets
18 forth in detail the basis for the challenge that was given by the Designating Party in
19 the meet and confer dialogue. The burden of persuasion in any such challenge
20 proceeding shall be on the Designating Party. Until the Court rules on the
21 challenge, all parties shall continue to afford the material in question the level of
22 protection to which it is entitled under the Designating Party's designation. The
23 parties shall attempt in good faith to combine as many disputed issues as possible
24 when bringing a motion under this Section.

25 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 **1. Basic Principles.** A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a non-Party in connection with this
28 Litigation only for prosecuting, defending, or attempting to settle this Litigation. A

1 Receiving Party may not use Protected Material for any business, commercial, or
2 competitive purpose, or during the course of any other case, litigation, or
3 proceeding. Such Protected Material may be disclosed only to the categories of
4 persons and under the conditions described in this Order. When the Final
5 Disposition of the Litigation has occurred, a Receiving Party must comply with the
6 provisions of Section XIV below.

7 **2.** Protected Material must be stored and maintained by a Receiving Party
8 at a location and in a secure manner that ensures that access is limited to the
9 persons authorized under this Order.

10 **3.** Disclosure of “CONFIDENTIAL” Information or Items. Unless
11 otherwise ordered by the Court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated
13 CONFIDENTIAL only to:

14 **(a)** Outside Counsel in this Litigation, as well as employees of said
15 counsel to whom it is reasonably necessary to disclose the information for this
16 Litigation;

17 **(b)** Two (2) employees for each Party who have first signed the
18 “Acknowledgment and Agreement of Confidentiality” (Exhibit A) and to whom the
19 Receiving Party concludes disclosure is reasonably necessary for this Litigation.
20 Notwithstanding the foregoing, no In-house Counsel or employee of a given
21 Defendant shall have access to the Protected Material of any other Defendant
22 without the written consent of the producing Defendant;

23 **(c)** Up to five (5) designated In-house Counsel of the Receiving
24 Party and their employee support staff to whom the Receiving Party concludes
25 disclosure is reasonably necessary for this Litigation who have signed the
26 “Acknowledgment and Agreement of Confidentiality” (Exhibit A).
27 Notwithstanding the foregoing, no In-house Counsel or employee of a given
28 Defendant shall have access to the Protected Material of any other Defendant

1 without the written consent of the producing Defendant;

2 (d) Experts (1) who have been retained for the purposes of this
3 Litigation; (2) to whom the Receiving Party concludes disclosure is reasonably
4 necessary for this Litigation; (3) who have signed the “Acknowledgement and
5 Agreement of Confidentiality” (Exhibit A); and (4) as to whom the procedures set
6 forth in Section VII.7, below, have been followed;

7 (e) The Court and its personnel (and any mediator or technical
8 advisor appointed by the Court);

9 (f) Court reporters and their staffs, to whom the Receiving Party
10 concludes disclosure is reasonably necessary for this Litigation, and for court
11 reporters and their staff that are not employed by the Court, they must first sign the
12 “Acknowledgment and Agreement of Confidentiality” (Exhibit A);

13 (g) Professional Vendors to whom the Receiving Party concludes
14 disclosure is reasonably necessary for this Litigation and who have first signed the
15 “Acknowledgment and Agreement of Confidentiality” (Exhibit A);

16 (h) Any persons who are witnesses during a deposition, court
17 hearing, or trial where specific documentary or testimonial evidence establishes on
18 the record that the witness has seen the Protected Material before or that the
19 Protected Material is otherwise known to the witness without any violation of any
20 confidentiality obligation owed to any Party in this Litigation, including, but not
21 limited to, where the person is identified in a Designating Party’s document or in
22 deposition testimony of a Designating Party’s employee as a person who already
23 has knowledge of the information contained in the document; and

24 (i) Mock jurors hired by trial consultants in connection with this
25 litigation, who may only be told about or shown CONFIDENTIAL documents
26 provided: (1) they are not affiliated with any party to this case or their direct
27 competitors; (2) they agree in writing to be bound by confidentiality; and (3) they
28 are not themselves given custody of any documents, nor permitted to remove any

1 presentations, questionnaires, or notes taken during the exercise from any room in
2 which the research is conducted.

3 **4.** Disclosure of “HIGHLY CONFIDENTIAL – COUNSELS’ EYES
4 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted
5 in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “HIGHLY CONFIDENTIAL – COUNSELS’
7 EYES ONLY” only to:

8 (a) Outside Counsel in this Litigation, as well as employees of said
9 counsel to whom it is reasonably necessary to disclose the information for this
10 Litigation;

11 (b) Up to five (5) designated In-house Counsel of the Receiving
12 Party and their support staff to whom the Receiving Party concludes disclosure is
13 reasonably necessary for this Litigation who have signed the “Acknowledgment
14 and Agreement of Confidentiality” (Exhibit A). Notwithstanding the foregoing, no
15 In-house Counsel or employee of a given Defendant shall have access to the
16 Protected Material of any other Defendant without the written consent of the
17 producing Defendant;

18 (c) Experts (1) who have been retained for the purposes of this
19 Litigation; (2) to whom the Receiving Party concludes disclosure is reasonably
20 necessary for this Litigation, (3) who have signed the “Acknowledgement and
21 Agreement of Confidentiality” (Exhibit A), and (4) as to whom the procedures set
22 forth in Section VII.7, below, have been followed;

23 (d) The Court and its personnel (and any mediator or technical
24 advisor appointed by the Court);

25 (e) Court reporters and their staffs, to whom the Receiving Party
26 concludes disclosure is reasonably necessary for this Litigation, and for court
27 reporters and their staff that are not employed by the Court, they must first sign the
28 “Acknowledgment and Agreement of Confidentiality” (Exhibit A);

1 **(f)** Professional Vendors to whom the Receiving Party concludes
2 disclosure is reasonably necessary for this Litigation and who have first signed the
3 “Acknowledgment and Agreement of Confidentiality” (Exhibit A);

4 **(g)** Mock jurors hired by trial consultants in connection with this
5 litigation may only be told about or shown HIGHLY CONFIDENTIAL –
6 COUNSELS’ EYES ONLY documents provided: (1) they are not affiliated with
7 any party to this case or their direct competitor; (2) they agree in writing to be
8 bound by confidentiality; and (3) they are not themselves given custody of any
9 documents, nor permitted to remove any presentations, questionnaires or notes
10 taken during the exercise from any room in which the research is conducted.
11 Parties may not show mock jurors any HIGHLY CONFIDENTIAL – SOURCE
12 CODE documents; and

13 **(h)** Any persons who are witnesses during a deposition, court
14 hearing, or trial where specific documentary or testimonial evidence establishes on
15 the record that the witness has seen the Protected Material before or that the
16 Protected Material is otherwise known to the witness without any violation of any
17 confidentiality obligation owed to any Party in this Litigation, including, but not
18 limited to, where the person is identified in a Designating Party’s document or in
19 deposition testimony of a Designating Party’s employee as a person who already
20 has knowledge of the information contained in the document.

21 **5.** Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE”
22 Information or Items. Unless otherwise ordered by the Court or permitted in
23 writing by the Designating Party, a Receiving Party may disclose any information
24 or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

25 **(a)** Outside Counsel in this Litigation, as well as employees of said
26 counsel to whom it is reasonably necessary to disclose the information for this
27 Litigation;

28 **(b)** Experts (1) who have been retained for the purposes of this

1 Litigation; (2) to whom the Receiving Party concludes disclosure is reasonably
2 necessary for this Litigation, (3) who have signed the “Acknowledgement and
3 Agreement of Confidentiality” (Exhibit A), and (4) as to whom the procedures set
4 forth in Section VII.7, below, have been followed;

5 (c) The Court and its personnel (and any mediator or technical
6 advisor appointed by the Court);

7 (d) Court reporters and their staffs, to whom the Receiving Party
8 concludes disclosure is reasonably necessary for this Litigation, and for court
9 reporters and their staff that are not employed by the Court, they must first sign the
10 “Acknowledgment and Agreement of Confidentiality” (Exhibit A); and

11 (e) Any persons who are witnesses during a deposition, court
12 hearing, or trial where specific documentary or testimonial evidence establishes on
13 the record that the witness has seen the Protected Material before or that the
14 Protected Material is otherwise known to the witness without any violation of any
15 confidentiality obligation owed to any Party in this Litigation, including, but not
16 limited to, where the person is identified in a Designating Party’s document or in
17 deposition testimony of a Designating Party’s employee as a person who already
18 has knowledge of the information contained in the document.

19 **6.** For the avoidance of doubt, no employee of a Party, including In-
20 House Counsel, may review any “HIGHLY CONFIDENTIAL – SOURCE CODE”
21 produced by another Party.

22 **7.** Procedures for Approving Disclosure of “CONFIDENTIAL,”
23 “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY,” and “HIGHLY
24 CONFIDENTIAL – SOURCE CODE” Information or Items to Experts

25 (a) Unless otherwise ordered by the Court or agreed in writing by
26 the Designating Party, a Receiving Party that seeks to disclose to an Expert any
27 information or items that have been designated “CONFIDENTIAL,” “HIGHLY
28 CONFIDENTIAL – COUNSELS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL

1 – SOURCE CODE” first must make a written request to the Designating Party that
2 (1) sets forth the full name and professional address and/or affiliation of the
3 proposed expert or consultant and the city and state of his or her primary residence,
4 (2) includes an up-to-date curriculum vitae identifying all present and prior
5 employments or consultancies from which the expert or consultant has received
6 compensation for work in his or her areas of expertise or to whom the expert has
7 provided professional services in the last seven years, (3) identifies each company
8 with which the Expert has a formal or informal agreement to provide professional
9 services in the future, (4) identifies (by name and number of the case, filing date,
10 and location of court) any litigation in connection with which the Expert has
11 provided any professional services during the preceding five years, with an
12 identification of which party that the Expert provided those services, (5) indicates
13 whether the Expert will have access to “HIGHLY CONFIDENTIAL – SOURCE
14 CODE,” and (6) attaches the Expert’s execution of the “Acknowledgement and
15 Agreement of Confidentiality” that is attached hereto as Exhibit A.

16 (b) A Party that makes a request and provides the information
17 specified in the preceding paragraph may disclose the subject Protected Material to
18 the identified Expert unless, within seven (7) calendar days of delivering the
19 request, the Party receives a written objection from the Designating Party. Any
20 such objection must set forth in detail the grounds on which it is based.

21 (c) A Party that makes a timely written objection must meet and
22 confer with the Receiving Party to try to resolve the matter by agreement within ten
23 (10) business days of making the objection. If no agreement is reached, the Party
24 seeking to make the disclosure to the Expert may file a motion for leave to provide
25 Protected Materials to the Expert with the Court, following the procedures set forth
26 in Local Rule 37. Until the Court rules on any such motion, the Protected Material
27 shall not be disclosed to the Expert, unless the objecting Party consents in writing.
28 The Designating Party shall bear the burden of showing why disclosure to the

1 Expert should be precluded.

2 **VIII. PROCEDURES FOR DISCLOSURE OF HIGHLY CONFIDENTIAL**
3 **SOURCE CODE**

4 1. Nothing in this Protective Order shall be deemed to be a conclusion or
5 order with respect to the question of what Source Code, if any, that a Party must
6 make available for review. Each Party reserves the right to object to any request for
7 Source Code, including without limitation, objections based on burden or
8 relevance. To the extent that any Party makes Source Code available for review,
9 the terms herein shall govern.

10 2. Each party shall make a single electronic copy of relevant and
11 responsive “HIGHLY CONFIDENTIAL – SOURCE CODE” available for
12 inspection by the opposing party’s outside counsel and any other person qualified to
13 access the Source Code under the Protective Order, subject to the following
14 provisions:

15 (a) All Source Code produced for inspection pursuant to these
16 provisions shall be made available at one office of Outside Counsel for the
17 Producing Party, or another mutually agreed upon location, or as otherwise ordered
18 by the Court.

19 (b) Each Producing Party shall make source code available for
20 inspection by authorized persons through the fact discovery period and until expert
21 discovery (including depositions) concludes.

22 (c) Once a Producing Party has confirmed that source code is
23 available for review, any single reviewing session shall be conducted during regular
24 business hours (9:00 A.M. to 5:00 P.M. local time, Monday-Friday, excluding
25 holidays) on five (5) business days’ written notice, or on such other dates as may be
26 mutually agreed. Such notice shall identify all persons who will review the
27 Producing Party’s Source Code during the reviewing session, who may be required
28 to provide photo identification before any review session.

1 **(d)** All Source Code produced for inspection pursuant to these
2 provisions shall be made available in a private, secure room on a secured, stand-
3 alone computer without Internet access or network access to other computers, or
4 shall be made available in another form mutually agreed upon by the parties.
5 Multiple defendants shall not make their Source Code available on the same
6 secured computer. All secured computers to be used during any single reviewing
7 session shall be located in the same private, secure room.

8 **(e)** The Source Code review may be supervised at the Producing
9 Party's discretion, so long as the supervision is done in a way that does not interfere
10 with the Receiving Party's ability to review the Source Code.

11 **(f)** No recordable media or recordable devices shall be permitted
12 into the Source Code review room, including without limitation sound recorders,
13 computers, peripheral equipment, cell phones, cameras, CDs, DVDs, or drives any
14 kind.

15 **(g)** The Producing Party will provide source code for review on a
16 computer of similar quality, and with similar technical specifications, to the
17 computers used by professionals who work in the hosting location.

18 **(h)** The Receiving Party may request that commercially available
19 software tools for viewing and searching Source Code be installed on the review
20 computer, provided, however that such software tools are reasonably necessary for
21 the Receiving Party to perform its review of the Source Code consistent with all of
22 the protections herein. The Receiving Party must provide the Producing Party with
23 a CD or DVD containing such licensed software tool(s) at least two weeks in
24 advance of the date on which the Receiving Party wishes to have the additional
25 software tools available for use on the Source Code computer. The Producing Party
26 shall make reasonable efforts to ensure that the software is installed and will notify
27 the Receiving Party if any technical difficulties are encountered. The Producing
28 Party shall notify the Receiving Party of any objections to such software tools being

1 installed. The Source Code may not be compiled by the Receiving Party.

2 (i) The Receiving Party may print-out a reasonable number of
3 pages of Source Code on pre-labeled pages provided by the Producing Party. The
4 Receiving Party may *not* leave the review room with any such pages. The
5 Receiving Party will only print portions of the Source Code that are reasonably
6 necessary to facilitate the Receiving Party's preparation of the case, including (1)
7 when reasonably necessary to prepare any filing with the Court or to serve any
8 pleadings or other papers on any other party, (2) to prepare internal attorney work
9 product materials, or (3) to prepare other necessary case materials such as testifying
10 expert reports, consulting expert written analyses, and related drafts and
11 correspondences.

12 (j) The Producing Party shall have five business days to review any
13 printouts and, absent any objection, produce the printouts. The Producing Party
14 may challenge any request for printouts pursuant to the dispute resolution procedure
15 set forth in Paragraph VI, whereby the Producing Party is the "Challenging Party"
16 and the Receiving Party is the "Designating Party" for purposes of dispute
17 resolution.

18 (k) The Receiving Party will not copy, remove, or otherwise
19 transfer any Source Code from the review computer including, without limitation,
20 copying, removing, or transferring the Source Code onto any recordable media or
21 recordable device, including without limitation sound recorders, computers, cellular
22 telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind. The
23 Receiving Party will not transmit any Source Code in any way from the review
24 facility.

25 (l) During inspection of the Source Code, the Receiving Party may
26 take notes, but may not copy the Source Code into the notes. The Receiving Party
27 shall maintain and store any paper copies of the Source Code or notes related to
28 such Source Code in a manner that prevents duplication of or unauthorized access

1 to the Source Code or notes, including, storing the Source Code or notes in a locked
2 room or cabinet at all times when those materials are not in use. Any such notes
3 must be labeled “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4 (m) Unless otherwise agreed by the parties in writing, following
5 each reviewing session, the Receiving Party shall remove all notes, documents, and
6 all other materials from the room that may contain work product and/or attorney-
7 client privileged information. The Producing Party shall not be responsible for any
8 items left in the room following each reviewing session.

9 (n) The Receiving Party may make no more than five (5) additional
10 paper copies of any printed portions of Source Code, not including copies attached
11 to court filings or used at depositions. The Receiving Party’s outside counsel shall
12 maintain a log of all paper copies of Source Code printed or copied by the
13 Receiving Party or received from the Producing Party that are disclosed by the
14 Receiving Party to any person qualified to view the material under the Protective
15 Order. The log shall include the names of the reviewers and/or recipients of the
16 paper copies of the Source Code and locations where the paper copies of the Source
17 Code are stored. Upon seven days written notice, the Receiving Party shall provide
18 a copy of this log to the Producing Party. Notwithstanding the foregoing, nothing
19 in this section shall prevent a Party from making such hard copies of Source Code
20 as are necessary for use by persons authorized to access Source Code under the
21 Protective Order for use in pleadings, exhibits, expert reports, discovery documents,
22 other Court documents, or any drafts of these documents. A Receiving Party may
23 quote a Producing Party’s Source Code in, or attach portions of the Producing
24 Party’s Source Code to, any Court filing; provided, however, that the Receiving
25 Party must file any document containing Source Code under seal.

26 (o) All hard copies of printouts designated “HIGHLY
27 CONFIDENTIAL – SOURCE CODE” shall be maintained in the custody and
28 control of the Receiving Party’s Outside Counsel of record. Any and all “HIGHLY

1 CONFIDENTIAL – SOURCE CODE” materials shall be stored and viewed only
2 within the United States; it shall not leave the geographic boundaries of the United
3 States. Any paper copies must be maintained at all times by Receiving Party’s
4 Outside Counsel of record in a locked and secure location. If the source code
5 printouts are being transported, they shall be transported in a locked container by a
6 recognized and secure overnight delivery service (with the key or combination sent
7 separately) or in the personal custody of Outside Counsel. The only exceptions to
8 this subsection (o) shall be that authorized experts are permitted to review and store
9 source code printouts (i) at a secure office or place of business that is their usual
10 place of work (i.e., not a home office) in the United States; (ii) where the office or
11 place of business has exterior locks that are locked whenever entrances are not
12 supervised; (iii) that has an interior lock on the specific interior space or internal
13 office where the printouts are stored, which is kept locked at all times; and (iv)
14 where the code is stored in a locked, secure container when it is not actively being
15 reviewed.

16 (p) No electronic copies (including scanned or photographed
17 versions) of Source Code printouts may be made by the Receiving Party except as
18 necessary to comply with Court filing rules. Images or copies of “HIGHLY
19 CONFIDENTIAL – SOURCE CODE” materials shall not be included in
20 correspondence between the parties (references to production numbers shall be used
21 instead), and shall be omitted from pleadings and other papers whenever possible.
22 If a party reasonably believes that it needs to submit a portion of “HIGHLY
23 CONFIDENTIAL – SOURCE CODE” material as part of a filing with the Court,
24 the filing party shall limit the portion of the “HIGHLY CONFIDENTIAL –
25 SOURCE CODE” material filed to those lines of code that are cited in the any
26 accompanying pleading or submission and/or that are directly relevant to and
27 necessary for deciding the issue for which the Source Code is being filed or offered.
28 The Receiving Party shall additionally submit the filing to the Court under seal and

1 in accordance with Local Rule 79-5. The Receiving Party shall maintain a log of
2 all such electronic copies of any portion of Source Code in its possession, including
3 the names of the reviewers and/or recipients of any such electronic copies, and the
4 locations where the electronic copies are stored. Additionally, any such electronic
5 copies must be labeled “HIGHLY CONFIDENTIAL – SOURCE CODE” and
6 treated as provided for in this Order and be encrypted and password protected.

7 (q) Copies of “HIGHLY CONFIDENTIAL – SOURCE CODE”
8 materials that are marked as deposition exhibits shall not be provided to the court
9 reporter or attached to deposition transcripts; rather, the deposition record will
10 identify the exhibit by its production numbers. All paper copies of “HIGHLY
11 CONFIDENTIAL – SOURCE CODE” materials brought to the deposition shall be
12 securely destroyed in a timely manner following the deposition.

13 (r) A Receiving Party shall not request print outs of any Source
14 Code for review in the first instance elsewhere, as such an approach would defeat
15 the purposes of this Section.

16 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
17 **PRODUCED IN OTHER LITIGATION**

18 1. If a Receiving Party is served with a subpoena or an order issued in
19 other litigation that would compel disclosure of any information or items
20 designated in this Litigation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL
21 – COUNSELS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
22 CODE,” the Receiving Party must so notify the Designating Party in writing,
23 promptly. Such notification must include a copy of the subpoena or court order.

24 2. The Receiving Party also must promptly inform in writing the Party
25 who caused the subpoena or order to issue in the other litigation that some or all of
26 the material covered by the subpoena or order is the subject of this Order. Such
27 notice must be given at least 30 days prior to any date for production of such
28 documents. In addition, the Receiving Party must deliver a copy of this Order

1 promptly to the party in the other action that caused the subpoena or order to issue.

2 **3.** The purpose of imposing these duties is to alert the interested parties to
3 the existence of this Protective Order and to afford the Designating Party in this
4 Litigation an opportunity to try to protect its confidentiality interests in the court
5 from which the subpoena or order issued. The Designating Party shall bear the
6 burdens and the expenses of seeking protection of its confidential material.

7 **4.** Nothing in these provisions should be construed as authorizing or
8 encouraging a Receiving Party in this Litigation to disobey a lawful directive from
9 another court.

10 **X. PROSECUTION BAR**

11 **1.** Unless otherwise specifically agreed to in writing by the parties, any
12 receiving person who reviews any of Defendants' HIGHLY CONFIDENTIAL –
13 COUNSELS' EYES ONLY or HIGHLY CONFIDENTIAL – OUTSIDE
14 COUNSELS' EYES ONLY – SOURCE CODE under this Protective Order
15 (“Prosecution Bar Materials”) shall immediately refrain from drafting or amending
16 patent claims (or assisting with the drafting or amending of patent claims) before
17 any foreign or domestic agency, including the United States Patent and Trademark
18 Office, on behalf of any party to this Action or third-party that relates to the subject
19 matter of the patents-in-suit or the Prosecution Bar Materials from the person's first
20 access to the Prosecution Bar Materials until the earlier of (a) two (2) years after the
21 person provides written notice to each Producing Party of the date of the person's
22 final access to any material that is designated under this Protective Order; or (b)
23 two (2) years after a final, non-appealable judgment is entered in this action.

24 **2.** Notwithstanding the foregoing, and for the avoidance of doubt,
25 persons who access Defendants' Protected Material may participate in a Patent
26 Office post-grant proceeding, provided, however, that such participation does not
27 involve in any way the drafting, or amending of patent claims or assisting with the
28 drafting or amending of patent claims.

1 3. The Prosecution Bar set forth herein shall be personal to any person
2 who reviews Prosecution Bar Materials and shall not be imputed to any other
3 persons or attorneys at the person’s law firm or employer. Attorneys who work on
4 this matter without reviewing Prosecution Bar Materials shall not be restricted from
5 engaging in prosecution activity on matters that fall within the Prosecution Bar.

6 **XI. LEGAL ADVICE**

7 Nothing in this Protective Order shall prevent outside counsel from giving
8 legal advice based on information that has been designated “CONFIDENTIAL,”
9 “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY,” or “HIGHLY
10 CONFIDENTIAL – SOURCE CODE,” provided such legal advice shall not reveal
11 the substance of any designated information to a person who is not authorized to
12 receive it.

13 **XII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Order, the Receiving Party must immediately (a) notify in writing the Designating
17 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of
18 the Protected Material, (c) inform the person or persons to whom unauthorized
19 disclosures were made of all the terms of this Order, and (d) request such person or
20 persons to execute the “Acknowledgement and Agreement of Confidentiality” that
21 is attached hereto as Exhibit A.

22 **XIII. FILING PROTECTED MATERIAL**

23 Without written permission from the Designating Party or a court order
24 secured after appropriate notice to all interested persons, a Party may not file in the
25 public record in this Litigation any Protected Material. A Party that seeks to file
26 under seal any Protected Material must comply with Local Rule 79-5.

27 **XIV. FINAL DISPOSITION**

28 Unless otherwise ordered or agreed in writing by the Producing Party, within

1 ninety (90) calendar days after the Final Disposition of this Litigation, each
2 Receiving Party must destroy all Protected Material or return all Protected Material
3 to the Producing Party. As used in this section, “all Protected Material” includes all
4 copies, abstracts, compilations, summaries, or any other form of reproducing or
5 capturing any of the Protected Material. Whether the Protected Material is returned
6 or destroyed, the Receiving Party must submit a written certification to the
7 Producing Party (and, if not the same person or entity, to the Designating Party) by
8 the 90-day deadline that all the Protected Material was returned or destroyed and
9 affirming that the Receiving Party has not retained any copies, abstracts,
10 compilations, summaries or other forms of reproducing or capturing any of the
11 Protected Material. Notwithstanding this provision, Outside Counsel of record (but
12 not Experts or anyone else) are entitled to retain all pleadings, motion papers,
13 transcripts, legal memoranda, correspondence, or attorney work product that do not
14 contain “HIGHLY CONFIDENTIAL – SOURCE CODE” materials, even if such
15 materials contain other Protected Material, provided that such retained materials are
16 stored in a secure manner that ensures that access is limited to such Outside
17 Counsel or their staff. Any such copies that contain or constitute Protected Material
18 remain subject to this Protective Order as set forth in Section IV (DURATION),
19 above. Nothing herein requires any person to alter the operation of their back-up
20 systems.

21 **XV. MISCELLANEOUS**

22 **1.** Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 **2.** Use of Party’s Own Materials. Nothing in this Order shall restrict a
25 Party’s ability to use and disclose its own designated information and items as it
26 chooses. Such disclosure shall not waive the protections of this Order and shall not
27 entitle other Parties or non-parties to disclose such information or items in violation
28 of this Order.

1 **3. Right to Assert Other Objections.** By stipulating to the entry of this
2 Order, no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Order.
4 Nothing in this Order shall be construed as requiring disclosure of privileged
5 materials, materials subject to protection under the work product doctrine, or
6 materials which are otherwise beyond the scope of permissible discovery.
7 Similarly, no Party waives any right to object on any ground to the use in evidence
8 of any of the material covered by this Order. Moreover, no Party waives any right
9 to seek further protection of any documents or to oppose requests for production.

10 **4. Inadvertent Production of Privileged Information.** If material subject
11 to a claim of attorney-client privilege, work-product immunity or any other
12 privilege or immunity is inadvertently produced, such production shall in no way
13 prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of
14 privilege or immunity for such information in this or any other state, federal or
15 international proceeding. When a Producing Party gives notice to Receiving Parties
16 that certain inadvertently produced material is subject to a claim of privilege or
17 other protection, the obligations of the Receiving Parties are those set forth in
18 Federal Rule of Civil Procedure 26(b)(5)(B). Employing electronic keyword
19 searching to identify and prevent disclosure of privileged material constitutes
20 “reasonable steps to prevent disclosure” under FRE 502(b)(2). Other methods may
21 also constitute such reasonable steps.

22 **5. Transmission and Communication of Protected Material.** Nothing in
23 this Order shall prohibit the transmission or communication of “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL – COUNSELS’ EYES ONLY” Information or
25 Items between or among qualified recipients:

26 (a) by e-mail, if the material is “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – COUNSELS’ EYES ONLY,” but not if the material is
28 “HIGHLY CONFIDENTIAL – SOURCE CODE”;

- 1 **(b)** by hand-delivery;
- 2 **(c)** in sealed envelopes or containers via certified mail, return
3 receipt requested, or an established freight, delivery or messenger service, but not if
4 the material is “HIGHLY CONFIDENTIAL – SOURCE CODE”; or
- 5 **(d)** by telephone, telegraph, facsimile or other electronic
6 transmission system; where, under the circumstances, there is no reasonable
7 likelihood that the transmission will be intercepted or misused by any person who is
8 not a qualified recipient, but not if the material is “HIGHLY CONFIDENTIAL –
9 SOURCE CODE.”

10 **6.** Receipt of Documents Containing a Party’s Own Protected Material.
11 In the event that a Party receives a document that has been designated under this
12 Protective Order in this Litigation, but the document appears to have been so
13 marked solely because it contains the Party’s own Protected Material (for example,
14 an interrogatory response, brief, or expert report that refers to the Party’s own
15 Protected Material), the Party will not be restricted in its disclosure or use of such a
16 document after the Party confirms with Outside Counsel for the Party that produced
17 the document that the document was marked solely because it contains the Party’s
18 own Protected Material.

19 **7.** Inclusion of Protected Material in Expert Reports, Briefs, and Motions.
20 A Party may include in expert reports, briefs, motions, exhibits or other litigation-
21 related documents to be served or filed in this Litigation or to be presented at
22 hearings or in trial, Protected Material received from more than one Producing
23 Party in this Litigation, regardless of whether each Producing Party remains a Party
24 to the Litigation, provided however such Protected Material is afforded all the same
25 protections set forth above based on its confidentiality designation.

26 **8.** Availability to Non-Parties. It is expressly contemplated that the
27 protections of this Protective Order apply to non-parties. Any Party issuing a
28 subpoena to a non-party shall enclose a copy of this Protective Order. Non-parties

1 shall not be entitled to access information of others designated under this Protective
2 Order.

3 **9. Privilege Logs.** No Party shall be required to log any information
4 created or dated on or after the date this Litigation was filed.

5 **10. Expert Discovery.** A testifying Expert's draft reports, notes, outlines,
6 and any other writings leading up to his or her final report(s) in this case are exempt
7 from discovery. In addition, all communications with a testifying Expert with
8 respect to his or her work on this case are exempt from discovery unless relied upon
9 by the Expert in forming his or her opinions.

10 **11. Retained Jurisdiction.** The Court shall retain jurisdiction to enforce
11 this Order after the Final Disposition, unless the Order is vacated.

12
13 DATED: October 4, 2013

Respectfully submitted,

14 **COOLEY LLP**

15
16 By: /s/ Orion Armon

Orion Armon
James P. Brogan
Tom Friel
Sarah Guske
Peter Sauer

17
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19 Attorneys for Plaintiff
ENFISH, LLC

20
21 DATED: October 4, 2013

PERKINS COIE LLP

22 By: /s/ Amanda Tessar

23 Chad S. Campbell
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Amy Simpson
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24
25 Attorneys for Defendants
*MICROSOFT CORPORATION, FISERV,
26 INC., INTUIT, INC., and JACK HENRY &
27 ASSOCIATES, INC.*

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DATED: October 4, 2013

**BROWN, WEGNER & BERLINER
LLP**

By: */s/ William J. Brown, Jr.*

William J. Brown, Jr.
Janet Park

Attorneys for Defendant
SAGE SOFTWARE, INC.

IT IS SO ORDERED.



DATED: October 7, 2013

MARIANA R. PFAELZER
UNITED STATES DISTRICT JUDGE

