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15 IN THE UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

18 DTS, INC. and DTS LICENSING LTD.,

19 Plaintiffs,

20 v.

21 NERO AG and NERO INC.,

22 Defendants.

23 NERO AG and NERO INC.,

24 Counterclaimants,

25 v.

26 DTS, INC. and DTS LICENSING LTD.,

27 Counterdefendants.

Case No. 2:14-cv-09791-RGK (PJWx)

**STIPULATED PROTECTIVE ORDER  
 FOR LITIGATION INVOLVING  
 PATENTS, HIGHLY SENSITIVE  
 CONFIDENTIAL INFORMATION  
 AND/OR TRADE SECRETS**

1 **1. PURPOSES AND LIMITATIONS**

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

11 **2. DEFINITIONS**

12 2.1. Challenging Party: a Party or Non-Party that challenges the designation of  
13 information or items under this Order.

14 2.2. “CONFIDENTIAL” Information or Items: information (regardless of how  
15 it is generated, stored or maintained) or tangible things that qualify for protection under  
16 Federal Rule of Civil Procedure 26(c).

17 2.3. Counsel (without qualifier): Outside Counsel of Record and House  
18 Counsel (as well as their support staff).

19 2.4. Designating Party: a Party or Non-Party that designates information or  
20 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”  
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
22 CONFIDENTIAL – SOURCE CODE.”

23 2.5. Disclosure or Discovery Material: all items or information, regardless of  
24 the medium or manner in which it is generated, stored, or maintained (including, among  
25 other things, testimony, transcripts, and tangible things), that are produced or generated in  
26 disclosures or responses to discovery in this matter.

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1           2.6.       Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
3 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
4 Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to  
5 become an employee of a Party or of a Party’s competitor.

6           2.7.       “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
7 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure  
8 of which to another Party or Non-Party would create a substantial risk of serious harm that  
9 could not be avoided by less restrictive means.

10          2.8.       “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
11 extremely sensitive “Confidential Information or Items” representing computer code and  
12 associated comments and revision histories, formulas, engineering specifications, or  
13 schematics that define or otherwise describe in detail the algorithms or structure of  
14 software or hardware designs, disclosure of which to another Party or Non-Party would  
15 create a substantial risk of serious harm that could not be avoided by less restrictive  
16 means.

17          2.9.       House Counsel: attorneys who are employees of a party to this action.  
18 House Counsel does not include Outside Counsel of Record or any other outside counsel.

19          2.10.      Non-Party: any natural person, partnership, corporation, association, or  
20 other legal entity not named as a Party to this action.

21          2.11.      Outside Counsel of Record: attorneys who are not employees of a party to  
22 this action but are retained to represent or advise a party to this action and have appeared  
23 in this action on behalf of that party or are affiliated with a law firm which has appeared  
24 on behalf of that party.

25          2.12.      Party: any party to this action, including all of its officers, directors,  
26 employees, consultants, retained experts, and Outside Counsel of Record (and their  
27 support staffs).

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1           2.13.     Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.14.     Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
6 their employees and subcontractors.

7           2.15.     Protected Material: any Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

10          2.16.     Receiving Party: a Party that receives Disclosure or Discovery Material  
11 from a Producing Party.

12 **3.     SCOPE**

13           The protections conferred by this Stipulation and Order cover not only Protected  
14 Material (as defined above), but also (1) any information copied or extracted from  
15 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
16 Material; and (3) any testimony, conversations, or presentations by Parties or their  
17 Counsel that might reveal Protected Material. However, the protections conferred by this  
18 Stipulation and Order do not cover the following information: (a) any information that is  
19 in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
20 public domain after its disclosure to a Receiving Party as a result of publication not  
21 involving a violation of this Order, including becoming part of the public record through  
22 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
23 disclosure or obtained by the Receiving Party after the disclosure from a source who  
24 obtained the information lawfully and under no obligation of confidentiality to the  
25 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
26 agreement or order.

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1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed  
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
4 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
5 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
6 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
7 trials, or reviews of this action, including the time limits for filing any motions or  
8 applications for extension of time pursuant to applicable law.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

11 Each Party or Non-Party that designates information or items for protection under this  
12 Order must take care to limit any such designation to specific material that qualifies under  
13 the appropriate standards. To the extent it is practical to do so, the Designating Party must  
14 designate for protection only those parts of material, documents, items, or oral or written  
15 communications that qualify – so that other portions of the material, documents, items, or  
16 communications for which protection is not warranted are not swept unjustifiably within  
17 the ambit of this Order.

18 If it comes to a Designating Party’s attention that information or items that it  
19 designated for protection do not qualify for protection at all or do not qualify for the level  
20 of protection initially asserted, that Designating Party must promptly notify all other  
21 parties that it is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
23 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
24 ordered, Protected Material that qualifies for protection under this Order must be clearly  
25 so designated before the material is disclosed or produced. Designation in conformity  
26 with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic  
28 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
3 SOURCE CODE” to each page that contains protected material. If only a portion or  
4 portions of the material on a page qualifies for protection, the Producing Party also must  
5 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
6 margins) and must specify, for each portion, the level of protection being asserted.

7 A Party or Non-Party that makes original documents or materials available for  
8 inspection need not designate them for protection until after the inspecting Party has  
9 indicated which material it would like copied and produced. During the inspection and  
10 before the designation, all of the material made available for inspection shall be deemed  
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
12 has identified the documents it wants copied and produced, the Producing Party must  
13 determine which documents, or portions thereof, qualify for protection under this Order.  
14 Then, before producing the specified documents, the Producing Party must affix the  
15 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to  
17 each page that contains Protected Material. If only a portion or portions of the material on  
18 a page qualifies for protection, the Producing Party also must clearly identify the  
19 protected portion(s) (e.g., by making appropriate markings in the margins) and must  
20 specify, for each portion, the level of protection being asserted.

21 (b) for testimony given in deposition or in other pretrial or trial  
22 proceedings, that the Designating Party identify on the record, before the close of the  
23 deposition, hearing, or other proceeding, all protected testimony and specify the level of  
24 protection being asserted. When it is impractical to identify separately each portion of  
25 testimony that is entitled to protection and it appears that substantial portions of the  
26 testimony may qualify for protection, the Designating Party may invoke on the record  
27 (before the deposition, hearing, or other proceeding is concluded) a right to have up to 14  
28 days to identify the specific portions of the testimony as to which protection is sought and

1 to specify the level of protection being asserted. Only those portions of the testimony that  
2 are appropriately designated for protection within the 14 days shall be covered by the  
3 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
4 specify, at the deposition or up to 14 days afterwards if that period is properly invoked,  
5 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 Parties shall make reasonable efforts to give the other parties notice if they expect a  
8 deposition, hearing or other proceeding to include Protected Material so that the other  
9 parties can ensure that only authorized individuals who have signed the  
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
11 proceedings or at the portions of those proceedings that may include Protected Material.  
12 The use of a document as an exhibit at a deposition shall not in any way affect its  
13 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
14 EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title  
16 page that the transcript contains Protected Material, and the title page shall be followed by  
17 a list of all pages (including line numbers as appropriate) that have been designated as  
18 Protected Material and the level of protection being asserted by the Designating Party.  
19 The Designating Party shall inform the court reporter of these requirements. Any  
20 transcript that is prepared before the expiration of a 14-day period for designation shall be  
21 treated during that period as if it had been designated “CONFIDENTIAL” in its entirety  
22 unless otherwise requested by the Designating Party. After the expiration of that period,  
23 the transcript shall be treated only as actually designated.

24 (c) for information produced in some form other than documentary and  
25 for any other tangible items, that the Producing Party affix in a prominent place on the  
26 exterior of the container or containers in which the information or item is stored the  
27 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
28 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. If only a portion or

1 portions of the information or item warrant protection, the Producing Party, to the extent  
2 practicable, shall identify the protected portion(s) and specify the level of protection being  
3 asserted. Any source code provided under the source code inspection procedures outlined  
4 in Paragraph 8 shall be deemed HIGHLY CONFIDENTIAL – SOURCE CODE—  
5 regardless of any markings on the container or containers in which the source code is  
6 stored.

7         5.3         Inadvertent Failures to Designate. If timely corrected, an inadvertent  
8 failure to designate qualified information or items does not, standing alone, waive the  
9 Designating Party’s right to secure protection under this Order for such material. Upon  
10 timely correction of a designation, the Receiving Party must make reasonable efforts to  
11 assure that the material is treated in accordance with the provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13         6.1.         Timing of Challenges. Any Party or Non-Party may challenge a  
14 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
15 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
16 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
17 litigation, a Party does not waive its right to challenge a confidentiality designation by  
18 electing not to mount a challenge promptly after the original designation is disclosed.

19         6.2.         Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process by providing written notice of each designation it is challenging and  
21 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has  
22 been made, the written notice must recite that the challenge to confidentiality is being  
23 made in accordance with this specific paragraph of the Protective Order. The parties shall  
24 attempt to resolve each challenge in good faith and must begin the process by conferring  
25 directly (in voice to voice dialogue; other forms of communication are not sufficient)  
26 within 14 days of the date of service of notice. In conferring, the Challenging Party must  
27 explain the basis for its belief that the confidentiality designation was not proper and must  
28 give the Designating Party an opportunity to review the designated material, to reconsider



1 the circumstances, and, if no change in designation is offered, to explain the basis for the  
2 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
3 process only if it has engaged in this meet and confer process first or establishes that the  
4 Designating Party is unwilling to participate in the meet and confer process in a timely  
5 manner.

6 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without  
7 court intervention, the Challenging Party may file and serve a motion to challenge  
8 confidentiality within 21 days of the initial notice of challenge or within 14 days of the  
9 parties agreeing that the meet and confer process will not resolve their dispute, whichever  
10 is earlier. Each such motion must be accompanied by a competent declaration affirming  
11 that the movant has complied with the meet and confer requirements imposed in the  
12 preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the  
14 Designating Party. All parties shall continue to afford the material in question the level of  
15 protection to which it is entitled under the Producing Party's designation until the court  
16 rules on the challenge.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1. Basic Principles. A Receiving Party may use Protected Material that is  
19 disclosed or produced by another Party or by a Non-Party in connection with this case  
20 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
21 Material may be disclosed only to the categories of persons and under the conditions  
22 described in this Order. When the litigation has been terminated, a Receiving Party must  
23 comply with the provisions of section 14 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location  
25 and in a secure manner that ensures that access is limited to the persons authorized under  
26 this Order.

27 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party

1 may disclose any information or item designated “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
3 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
4 disclose the information for this litigation;

5 (b) the officers, directors, and employees (including House Counsel) of  
6 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
7 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants,  
13 and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
14 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
17 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
18 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
19 Protected Material must be separately bound by the court reporter and may not be  
20 disclosed to anyone except as permitted under this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information.

23 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
24 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

25 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
26 Receiving Party may disclose any information or item designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
28 SOURCE CODE” only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
3 disclose the information for this litigation;

4 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
5 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to  
6 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a),  
7 below, have been followed;

8 (c) the court and its personnel;

9 (d) court reporters and their staff, professional jury or trial consultants, and  
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

12 (e) the author or recipient of a document containing the information or a  
13 custodian or other person who otherwise possessed or knew the information.

14 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
16 SOURCE CODE” Information or Items to Experts.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information  
19 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
20 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph  
21 7.3(b) first must make a written request to the Designating Party that (1) identifies the  
22 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
23 “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party  
24 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and  
25 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
26 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person  
27 or entity from whom the Expert has received compensation or funding for work in his or  
28 her areas of expertise or to whom the expert has provided professional services, including

1 in connection with a litigation, at any time during the preceding five years, and (6)  
2 identifies (by name and number of the case, filing date, and location of court) any  
3 litigation in connection with which the Expert has offered expert testimony, including  
4 through a declaration, report, or testimony at a deposition or trial, during the preceding  
5 five years.

6 (b) A Party that makes a request and provides the information specified in the  
7 preceding respective paragraphs may disclose the subject Protected Material to the  
8 identified Expert unless, within 10 days of delivering the request, the Party receives a  
9 written objection from the Designating Party. Any such objection must set forth in detail  
10 the grounds on which it is based.

11 (c) A Party that receives a timely written objection must meet and confer with the  
12 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
13 agreement within seven days of the written objection. If no agreement is reached, the  
14 Party seeking to make the disclosure to the Expert may file a motion seeking permission  
15 from the court to do so. Any such motion must describe the circumstances with  
16 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably  
17 necessary, assess the risk of harm that the disclosure would entail, and suggest any  
18 additional means that could be used to reduce that risk. In addition, any such motion must  
19 be accompanied by a competent declaration describing the parties' efforts to resolve the  
20 matter by agreement (i.e., the extent and the content of the meet and confer discussions)  
21 and setting forth the reasons advanced by the Designating Party for its refusal to approve  
22 the disclosure.

23 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
24 burden of proving that the risk of harm that the disclosure would entail (under the  
25 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
26 Material to its Expert.

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1 **8. SOURCE CODE**

2 (a) To the extent production of source code becomes necessary in this case, a  
3 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE  
4 CODE” if it comprises or includes confidential, proprietary or trade secret source code.

5 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL  
7 – ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the  
8 individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
9 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

10 (c) Any source code produced in discovery shall be made available for  
11 inspection, in a format allowing it to be reasonably reviewed and searched, during normal  
12 business hours or at other mutually agreeable times, at an office of the Producing Party’s  
13 counsel or using a third party who provides secure hosting for remote source code  
14 inspection, at the election of the Receiving Party. The source code shall be made available  
15 for inspection on a secured computer in a secured room, and the Receiving Party shall not  
16 copy, remove, or otherwise transfer any portion of the source code onto any recordable  
17 media or recordable device. The third party hosting service shall take appropriate  
18 measures to ensure that there is no unauthorized recording, copying or transmission of the  
19 source code.

20 (d) The Receiving Party may request paper copies of limited portions of source  
21 code that are reasonably necessary for the preparation of court filings, pleadings, expert  
22 reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
23 purposes of reviewing the source code other than electronically as set forth in paragraph  
24 (c) in the first instance. The Producing Party shall provide all such source code in paper  
25 form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE  
26 CODE.” The Producing Party may challenge the amount of source code requested in hard  
27 copy form pursuant to the dispute resolution procedure and timeframes set forth in  
28 Paragraph 6.

1 (e) The Receiving Party shall maintain a record of any individual who has  
2 inspected any portion of the source code in electronic or paper form. The Receiving Party  
3 shall maintain all paper copies of any printed portions of the source code in a secured,  
4 locked area. The Receiving Party shall not create any electronic or other images of the  
5 paper copies and shall not convert any of the information contained in the paper copies  
6 into any electronic format. The Receiving Party shall only make additional paper copies if  
7 such additional copies are (1) necessary to prepare court filings, pleadings, or other papers  
8 (including a testifying expert's expert report) or (2) necessary for deposition. Any paper  
9 copies used during a deposition shall be retrieved by the Producing Party at the end of  
10 each day and must not be given to or left with a court reporter or any other unauthorized  
11 individual.

12 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
13 **OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that  
15 compels disclosure of any information or items designated in this action as  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
17 "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification shall include  
19 a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue  
21 in the other litigation that some or all of the material covered by the subpoena or order is  
22 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
23 Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
25 Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the  
27 subpoena or court order shall not produce any information designated in this action as  
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or

1 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court  
2 from which the subpoena or order issued, unless the Party has obtained the Designating  
3 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
4 protection in that court of its confidential material – and nothing in these provisions  
5 should be construed as authorizing or encouraging a Receiving Party in this action to  
6 disobey a lawful directive from another court.

7 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
8 **PRODUCED IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a Non-  
10 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
12 SOURCE CODE.” Such information produced by Non-Parties in connection with this  
13 litigation is protected by the remedies and relief provided by this Order. Nothing in these  
14 provisions should be construed as prohibiting a Non-Party from seeking additional  
15 protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce  
17 a Non-Party’s confidential information in its possession, and the Party is subject to an  
18 agreement with the Non-Party not to produce the Non-Party’s confidential information,  
19 then the Party shall:

20 1. promptly notify in writing the Requesting Party and the Non-Party that  
21 some or all of the information requested is subject to a confidentiality agreement with a  
22 Non-Party;

23 2. promptly provide the Non-Party with a copy of the Stipulated  
24 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
25 specific description of the information requested; and

26 3. make the information requested available for inspection by the Non-  
27 Party.

28 (c) If the Non-Party fails to object or seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the Receiving Party  
2 may produce the Non-Party’s confidential information responsive to the discovery  
3 request—provided that this does not violate the terms and conditions of any agreement  
4 with the Non-Party (which will trump all provisions outlined in this Paragraph 10). If the  
5 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
6 information in its possession or control that is subject to the confidentiality agreement  
7 with the Non-Party before a determination by the court. The Non-Party shall bear the  
8 burden and expense of seeking protection in this court of its Protected Material.

9 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
21 produced material is subject to a claim of privilege or other protection, the obligations of  
22 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
23 This provision is not intended to modify whatever procedure may be established in an e-  
24 discovery order that provides for production without prior privilege review. Pursuant to  
25 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
26 effect of disclosure of a communication or information covered by the attorney-client  
27 privilege or work product protection, the parties may incorporate their agreement in the  
28 stipulated protective order submitted to the court.



1 **13. MISCELLANEOUS**

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
3 person to seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
5 Protective Order no Party waives any right it otherwise would have to object to disclosing  
6 or producing any information or item on any ground not addressed in this Stipulated  
7 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
8 evidence of any of the material covered by this Protective Order.

9 14.3 Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party  
11 may not file in the public record in this action any Protected Material. A Party that seeks  
12 to file under seal any Protected Material must comply with the court's local rules.

13 **14. FINAL DISPOSITION**

14 Within 60 days after the final disposition of this action, as defined in  
15 paragraph 4, each Receiving Party must return all Protected Material to the Producing  
16 Party or destroy such material. As used in this subdivision, "all Protected Material"  
17 includes all copies, abstracts, compilations, summaries, and any other format reproducing  
18 or capturing any of the Protected Material. Whether the Protected Material is returned or  
19 destroyed, the Receiving Party must submit a written certification to the Producing Party  
20 (and, if not the same person or entity, to the Designating Party) by the 60-day deadline  
21 that (1) identifies (by category, where appropriate) all the Protected Material that was  
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
23 abstracts, compilations, summaries or any other format reproducing or capturing any of  
24 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
27 work product, and consultant and expert work product, even if such materials contain  
28 Protected Material. Any such archival copies that contain or constitute Protected Material



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
5 have read in its entirety and understand the Stipulated Protective Order that was issued by  
6 the United States District Court for the Central District of California on  
7 [\_\_\_\_\_] in the case of *DTS, Inc. and DTS Licensing Ltd. v. Nero AG and Inc.*,  
8 Case No. 2:14-CV-09791-RGK-VBK. I agree to comply with and to be bound by all the  
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to  
10 so comply could expose me to sanctions and punishment in the nature of contempt. I  
11 solemnly promise that I will not disclose in any manner any information or item that is  
12 subject to this Stipulated Protective Order to any person or entity except in strict  
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for  
15 the Central District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this action or  
21 any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

