

1 ERVIN COHEN & JESSUP LLP
 2 Randall S. Leff (Bar No. 77148)
 3 rleff@ecjlaw.com
 4 9401 Wilshire Boulevard, Ninth Floor
 Beverly Hills, California 90212-2974
 Telephone: (310) 273-6333
 Facsimile: (310) 859-2325

5 LATHAM & WATKINS LLP
 6 David J. Schindler (Bar No. 130490)
 7 david.schindler@lw.com
 R. Peter Durning, Jr. (Bar No. 277968)
 8 peter.durning@lw.com
 9 355 South Grand Avenue, Suite 100
 Los Angeles, California 90071-1560
 Telephone: (213) 485-1234
 Facsimile: (213) 891-8763

10 LATHAM & WATKINS LLP
 11 Kyle R. Jefcoat (*pro hac vice*)
 12 kyle.jefcoat@lw.com
 13 555 Eleventh Street, NW, Suite 1000
 Washington, D.C. 20004-1304
 Telephone: (202) 637-2200
 Facsimile: (202) 637-2201

14 Attorneys for Plaintiff
 15 KST Data, Inc.

16
 17 UNITED STATES DISTRICT COURT
 18 CENTRAL DISTRICT OF CALIFORNIA

19
 20 KST DATA, INC.,
 a California corporation,

21 Plaintiff,

22 v.

23 NORTHROP GRUMMAN SYSTEMS
 24 CORPORATION, a Delaware
 corporation, and DOES 1 through 25,
 25 inclusive,

26 Defendants.

CASE NO. 2:17-CV-5125-MWF(PJWx)

[Discovery Matter: referred to
 The Hon. Patrick J. Walsh]

STIPULATED PROTECTIVE ORDER

Trial Date: June 11, 2019
 Complaint Filed: June 14, 2017

1 **I.**

2 **A. PURPOSES AND LIMITATIONS**

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
13 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists and
18 other valuable research, development, commercial, financial, technical and/or
19 proprietary information for which special protection from public disclosure and
20 from use for any purpose other than prosecution of this action is warranted. Such
21 confidential and proprietary materials and information consist of, among other
22 things, confidential business or financial information, information regarding
23 confidential business practices, or other confidential research, development, or
24 commercial information (including information implicating privacy rights of third
25 parties), information otherwise generally unavailable to the public, or which may
26 be privileged or otherwise protected from disclosure under state or federal statutes,
27 court rules, case decisions, or common law. Accordingly, to expedite the flow of
28 information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good faith belief that it has been maintained in
8 a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.

10 **II. DEFINITIONS**

- 11 1. **Action:** this pending federal lawsuit, KST Data, Inc. v.
12 Northrop Grumman Systems Corporation, United States
13 District Court for the Central District of California, Case No.
14 2:17-CV-5125-MW-PJW.
- 15 2. **Challenging Party:** a Party or Non-Party that challenges the
16 designation of information or items under this Order.
- 17 3. **“CONFIDENTIAL” Information or Items:** information
18 (regardless of how it is generated, stored or maintained) or
19 tangible things that qualify for protection under Federal Rule of
20 Civil Procedure 26(c), and as specified above in the Good
21 Cause Statement.
- 22 4. **Counsel:** Outside Counsel of Record and House Counsel (as
23 well as their support staff).
- 24 5. **Designating Party:** a Party or Non-Party that designates
25 information or items that it produces in disclosures or in
26 responses to discovery as “CONFIDENTIAL.”
- 27 6. **Disclosure or Discovery Material:** all items or information,
28 regardless of the medium or manner in which it is generated,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

- 7. **Expert:** a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.
- 8. **House Counsel:** attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.
- 9. **Non-Party:** any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.
- 10. **Outside Counsel of Record:** attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.
- 11. **Party:** any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).
- 12. **Producing Party:** a Party or Non-Party that produces Disclosure or Discovery Material in this Action.
- 13. **Professional Vendors:** persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and

1 organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 14. **Protected Material:** any Disclosure or Discovery Material that
4 is designated as “CONFIDENTIAL.”

5 15. **Receiving Party:** a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 **III. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the
14 trial judge. This Order does not govern the use of Protected Material at trial.

15 **IV. DURATION**

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

24 **V. DESIGNATING PROTECTED MATERIAL**

25 **A. Exercise of Restraint and Care in Designating Material for**
26 **Protection.**

27 Each Party or Non-Party that designates information or items for protection
28 under this Order must take care to limit any such designation to specific material

1 that qualifies under the appropriate standards. The Designating Party must
2 designate for protection only those parts of material, documents, items, or oral or
3 written communications that qualify so that other portions of the material,
4 documents, items, or communications for which protection is not warranted are not
5 swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber the case development process or to
9 impose unnecessary expenses and burdens on other parties) may expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 **B. Manner and Timing of Designations.**

15 Except as otherwise provided in this Order (see, e.g., second paragraph of
16 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
17 Discovery Material that qualifies for protection under this Order must be clearly so
18 designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

- 20 1. for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other
22 pretrial or trial proceedings), that the Producing Party affix at a
23 minimum, the legend "CONFIDENTIAL" (hereinafter
24 "CONFIDENTIAL legend"), to each page that contains
25 protected material. If only a portion or portions of the material
26 on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).
3. for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.
4. for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).
5. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items

1 does not, standing alone, waive the Designating Party's right to
2 secure protection under this Order for such material. Upon
3 timely correction of a designation, the Receiving Party must
4 make reasonable efforts to assure that the material is treated in
5 accordance with the provisions of this Order.

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 **A. Timing of Challenges.**

8 Any Party or Non-Party may challenge a designation of confidentiality at
9 any time that is consistent with the Court's Scheduling Order.

10 **B. Meet and Confer.**

11 The Challenging Party shall initiate the dispute resolution process under
12 Local Rule 37.1 et seq.

13 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges, and those made for an improper purpose
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
16 expose the Challenging Party to sanctions. Unless the Designating Party has
17 waived or withdrawn the confidentiality designation, all parties shall continue to
18 afford the material in question the level of protection to which it is entitled under
19 the Producing Party's designation until the Court rules on the challenge.

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

21 **A. Basic Principles.**

22 A Receiving Party may use Protected Material that is disclosed or produced
23 by another Party or by a Non-Party in connection with this Action only for
24 prosecuting, defending, or attempting to settle this Action. Such Protected Material
25 may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the Action has been terminated, a Receiving Party
27 must comply with the provisions of section 13 below (FINAL DISPOSITION).

28

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

4 **B. Disclosure of “CONFIDENTIAL” Information or Items.**

5 Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item
7 designated “CONFIDENTIAL” only to:

- 8 1. the Receiving Party’s Outside Counsel of Record in this Action,
9 as well as employees of said Outside Counsel of Record to
10 whom it is reasonably necessary to disclose the information for
11 this Action;
- 12 2. the officers, directors, and employees (including House
13 Counsel) of the Receiving Party to whom disclosure is
14 reasonably necessary for this Action;
- 15 3. Experts (as defined in this Order) of the Receiving Party to
16 whom disclosure is reasonably necessary for this Action and
17 who have signed the “Acknowledgment and Agreement to Be
18 Bound” (Exhibit A);
- 19 4. the court and its personnel;
- 20 5. court reporters and their staff;
- 21 6. professional jury or trial consultants, mock jurors, and
22 Professional Vendors to whom disclosure is reasonably
23 necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 7. the author or recipient of a document containing the
26 information or a custodian or other person who otherwise
27 possessed or knew the information;

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and
9. any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

1. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

2. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the

1 information requested is subject to a
2 confidentiality agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the
4 Stipulated Protective Order in this Action, the
5 relevant discovery request(s), and a reasonably
6 specific description of the information requested;
7 and

8 (3) make the information requested available for
9 inspection by the Non-Party, if requested.

10 3. If the Non-Party fails to seek a protective order from this court
11 within 14 days of receiving the notice and accompanying
12 information, the Receiving Party may produce the Non-Party's
13 confidential information responsive to the discovery request. If
14 the Non-Party timely seeks a protective order, the Receiving
15 Party shall not produce any information in its possession or
16 control that is subject to the confidentiality agreement with the
17 Non-Party before a determination by the court. Absent a court
18 order to the contrary, the Non-Party shall bear the burden and
19 expense of seeking protection in this court of its Protected
20 Material.

21 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has
23 disclosed Protected Material to any person or in any circumstance not authorized
24 under this Stipulated Protective Order, the Receiving Party must immediately (a)
25 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
26 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
27 the person or persons to whom unauthorized disclosures were made of all the terms
28 of this Order, and (d) request such person or persons to execute the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A.

3 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the Receiving Parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order that provides for
10 production without prior privilege review. Pursuant to Federal Rule of Evidence
11 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
12 of a communication or information covered by the attorney-client privilege or
13 work product protection, the parties may incorporate their agreement in the
14 stipulated protective order submitted to the court.

15 **XII. MISCELLANEOUS**

16 **A. Right to Further Relief.**

17 Nothing in this Order abridges the right of any person to seek its
18 modification by the Court in the future.

19 **B. Right to Assert Other Objections.**

20 By stipulating to the entry of this Protective Order no Party waives any right
21 it otherwise would have to object to disclosing or producing any information or
22 item on any ground not addressed in this Stipulated Protective Order. Similarly, no
23 Party waives any right to object on any ground to use in evidence of any of the
24 material covered by this Protective Order.

25 **C. Filing Protected Material.**

26 A Party that seeks to file under seal any Protected Material must comply
27 with Civil Local Rule 79-5. Protected Material may only be filed under seal
28 pursuant to a court order authorizing the sealing of the specific Protected Material

1 at issue. If a Party's request to file Protected Material under seal is denied by the
2 court, then the Receiving Party may file the information in the public record unless
3 otherwise instructed by the court.

4 **XIII. FINAL DISPOSITION**

5 After the final disposition of this Action, as defined in paragraph 4, within
6 60 days of a written request by the Designating Party, each Receiving Party must
7 return all Protected Material to the Producing Party or destroy such material. As
8 used in this subdivision, "all Protected Material" includes all copies, abstracts,
9 compilations, summaries, and any other format reproducing or capturing any of the
10 Protected Material. Whether the Protected Material is returned or destroyed, the
11 Receiving Party must submit a written certification to the Producing Party (and, if
12 not the same person or entity, to the Designating Party) by the 60 day deadline that
13 (1) identifies (by category, where appropriate) all the Protected Material that was
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or any other format reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel
17 are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
19 and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain Protected Material. Any such archival
21 copies that contain or constitute Protected Material remain subject to this
22 Protective Order as set forth in Section 4 (DURATION).

23
24
25
26
27
28

1 **XIV. ENFORCEMENT**

2 Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

5
6 Dated: September 25, 2017

Respectfully submitted,

7 PERKINS COIE LLP
8 Bruce V. Spiva
9 Andrew E. Shipley
10 Andrew J. Victor
11 Alisha C. Burgin

ERVIN COHEN & JESSUP LLP
Randall S. Leff

LATHAM & WATKINS LLP
David J. Schindler
Kyle R. Jefcoat
R. Peter Durning, Jr.

11 By /s/ Bruce V. Spiva _____
12 Bruce V. Spiva
13 Attorneys for Defendant
14 Northrop Grumman
15 Systems Corporation

By /s/ R. Peter Durning, Jr. _____
R. Peter Durning, Jr.
Attorneys for Plaintiff
KST Data, Inc.

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: September 26, 2017

17 

18
19 Honorable Patrick J. Walsh
20 United States Magistrate Judge

21 **ATTESTATION**

22 Pursuant to Local Rule 5-4.3.4(a)(2)(ii), I, R. Peter Durning, Jr., attest that
23 all other signatories listed, and on whose behalf this filing is submitted, concur in
24 this filing's content and have authorized such filing.

25
26 By /s/ R. Peter Durning, Jr. _____
R. Peter Durning, Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of _____ **[insert formal
name of the case and the number and initials assigned to it by the court]**. I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly promise that
I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order. I further agree to submit to the jurisdiction of the
United States District Court for the Central District of California for the purpose of
enforcing the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____