

1 Good cause exists for the Court to enter the following Protective Order Re.
2 Confidential Information (the “Protective Order”). Plaintiff Dino Ditta (“Ditta”) is
3 the current President and CEO of DataTrax Incorporated, which has proprietary
4 software products, and Ditta also works as a consultant on products and business
5 activities for third parties in the software product industry. Defendant Mentor
6 Graphics Corporation (“Mentor”) manufactures and sells computer software that
7 assists engineers in designing and fabricating complex electronic systems such as
8 printed circuit boards and integrated circuits. Ditta and Mentor (collectively, “the
9 parties”) are thus both in the software industry and have highly sensitive business
10 information. Ditta’s former business, Router Solutions, Inc., the acquisition of
11 which is at issue in this litigation, was a private business that did not report any
12 financial information to the public. Moreover, Mentor and Ditta maintain
13 confidential, proprietary and trade secret information relating to the software at
14 issue in this litigation, as well as business plans, customer information, and
15 financial information relating to their businesses and the software at issue. The
16 broad dissemination of this confidential information can permanently and
17 irreparably harm the parties’ competitive standing by allowing competitors to use
18 the information for business gain without the incidental expenditures and costly
19 research required to independently create it. This unfair advantage is problematic
20 to the discovery process in this action because each party, without a protective
21 order in place, runs the risk of serious and irreparable harm to its business. The
22 Ninth Circuit recognizes that dissemination of confidential business information is
23 the “precise sort of information” which, if disclosed, would harm a litigant’s
24 competitive standing. *Electronic Arts, Inc. v. United States District Court*, Case
25 No. 08-74426, 2008 U.S. App. LEXIS 22476, at *4-5 (9th Cir. Oct. 28, 2008).

26 The parties have jointly drafted this Protective Order and seek to have it
27 entered by the Court to prevent harmful disclosure of the parties’ confidential
28 information while balancing the public’s right to acquire information that properly
falls outside the scope of the parties’ protectable, confidential interests. The

1 parties agree that the adoption and adherence to this Protective Order will facilitate
2 an orderly and cost-effective discovery process and preparation for trial or
3 settlement, and that the confidential information will not be used for any purpose
4 that is not directly related to this litigation. Therefore, good cause exists to enter
5 this Protective Order to facilitate the mutual exchange of information without
6 harming the competitive standing of the parties in the Action.

7 **IT IS HEREBY ORDERED:**

8 1. Disclosure and discovery activity in this action are likely to involve
9 production of confidential, proprietary, or private information for which special
10 protection from public disclosure and use for any purpose other than prosecuting
11 this litigation is warranted. Accordingly, the parties stipulate to and petition the
12 Court to enter the following Protective Order, which shall govern the procedure for
13 designating as confidential certain categories of documents and information
14 produced in connection with discovery in this Action, including by non-parties,
15 and shall define limitations on the use and disclosure of such confidential
16 materials. The parties further acknowledge that this Protective Order creates no
17 entitlement to file confidential information under seal; the Local Rules of this
18 Court set forth the procedures that must be followed and reflects the standards that
19 will be applied when a party seeks permission from the Court to file material under
20 seal.

21 2. Any party who is required to produce documents or information in
22 discovery in this case (hereafter referred to as the “producing party”) may
23 designate the material produced as “confidential” pursuant to this Protective Order.
24 In doing so, the producing party represents that it has a bona fide belief that the
25 document or information designated as “confidential” (a) constitutes trade secret,
26 proprietary or commercial information which has been preserved or maintained in
27 a manner reasonably calculated to preserve its confidentiality from the public,
28 (b) is subject to a legally-protected right of privacy by the producing party,

1 including but not limited to any right of privacy created by or recognized under the
2 United States Constitution, the California Constitution, any state or federal statute
3 or case law, or (c) would reveal confidential research, development, financial,
4 marketing, customer, personnel or other business information of the producing
5 party or its clients. (Documents and information within this category shall be
6 referred to herein as “confidential material.”)

7 At minimum, a producing party must designate those documents which he or
8 it believes contain confidential material by (i) affixing to each such document the
9 legend “CONFIDENTIAL” in a size and location(s) which makes the designation
10 readily apparent; (ii) designating by Bates-stamp number; or (iii) describing by
11 way of category or other unambiguous designation. A “CONFIDENTIAL”
12 designation also must be affixed to any documents produced in the course of this
13 Action, including portions of briefs, memoranda or any other writings filed with
14 the Court, which mention, discuss or comment upon any confidential material.

15 3. With regard to the production of documents or information by any
16 non-party to this Action, any party to this Action may designate all or any portion
17 of such documents and information to be confidential material pursuant to this
18 Protective Order by serving on all parties a specific designation, by Bates number
19 to the extent possible, of the material claimed as “confidential” within thirty (30)
20 days of receiving copies of the material. In doing so, the designating party makes
21 the same representation set forth in paragraph 2 with respect to confidential
22 material. Once designated as “confidential” the confidential material shall be
23 treated in accordance with such designation for all purposes consistent with the
24 terms of this Protective Order, and each party shall make certain that all such
25 confidential material bears the “CONFIDENTIAL” legend pursuant to the
26 requirements of this Protective Order.

27 4. All copies, extracts, summaries, charts or notes (collectively,
28 “Extracts”) of any confidential material shall also constitute and be treated as

1 confidential material as provided in this Protective Order. Any person making
2 Extracts or causing Extracts to be made of any confidential material shall make
3 certain that all such Extracts bear the “CONFIDENTIAL” legend pursuant to the
4 requirements of this Protective Order.

5 5. Confidential material shall not be used for any purpose other than the
6 prosecution or defense of this Action or as otherwise required by law. The parties
7 to this Action and their counsel shall take all diligent precautions to prevent the
8 disclosure of any confidential material designated in this lawsuit to persons not
9 authorized pursuant to this Protective Order.

10 6. Confidential material designated in this Action may not be disclosed
11 to any person unless the disclosure is authorized by the terms of paragraph 9 of this
12 Protective Order. In the event that additional persons become parties to or appear
13 in this Action, neither the additional persons nor their counsel of record, in-house
14 counsel, or any person acting on their behalf or retained to assist such additional
15 persons, shall have access to any confidential material designated in this Action
16 until such additional person’s counsel of record has consented in writing to this
17 Protective Order. Each such additional person must obtain written consent of the
18 parties hereto prior to entering into this Protective Order, which consent shall not
19 be unreasonably withheld.

20 7. Any document or information designated as confidential in this
21 Action which is filed with the Court for any purpose shall be filed in a sealed
22 envelope or other container marked on the outside with the caption of this Action
23 and the following statement:

24 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER”

25 If any person fails to file under seal any confidential material designated in this
26 lawsuit, such person immediately shall contact the Court’s clerk and arrange to
27 have the confidential material designated in this lawsuit placed under seal. The
28 producing party may apply to have the confidential material designated in this

1 lawsuit placed under seal.

2 8. The parties shall use their best efforts to include confidential material
3 designated as such in Court filings only when absolutely necessary, and shall, to
4 the extent possible, file redacted versions of sealed filings that redact any portions
5 of those filings that contain or reflect material designated as “confidential.” If an
6 application to seal is pending, any materials filed under seal shall remain under
7 seal and shall not be disclosed to any person other than Court personnel, counsel of
8 record who have agreed to this Protective Order, and any other person permitted
9 under the terms of this Protective Order to have access to the sealed materials, until
10 the Court has ruled on the application to seal. A complete, unredacted set of
11 documents filed under seal shall be provided by the filing party to all other counsel
12 of record who have agreed to this Protective Order.

13 9. Confidential material designated as “CONFIDENTIAL” shall be used
14 by the party receiving such information solely for purposes related to this
15 litigation and may be disclosed only to the following persons:

16 (a) officers, directors, and employees of a party to whom it is
17 deemed necessary that the documents be shown for purposes of the Action,
18 provided that any such persons shall be advised before being provided the
19 confidential material that they are subject to the terms of this Protective Order;

20 (b) inside and outside counsel for the respective parties, and their
21 respective partners, shareholders, associates, of counsel, law clerks, paralegals, and
22 secretaries engaged in work for such counsel to assist in this Action (collectively
23 “Counsel”); and any support staff and independent contractors (including outside
24 vendors such as photocopying services) assisting counsel in the prosecution or
25 defense of this Action;

26 (c) experts or consultants retained for purposes of this Action
27 (“Retained Experts”), in accordance with the procedures set forth in paragraph 10
28 below;

1 (d) witnesses in the course of deposition, hearing, or trial testimony
2 where counsel has a reasonable and good faith belief that examination with respect
3 to the confidential material is necessary, and any person being prepared to testify,
4 where counsel has a reasonable and good faith belief that such person will be a
5 witness in this action and that his/her examination with respect to the confidential
6 material is necessary in connection with such testimony; persons to whom
7 confidential material is disclosed pursuant to this subparagraph may not be
8 permitted to retain copies of the confidential material;

9 (e) any person who authored the confidential material, or
10 previously received the confidential material in the ordinary course of business;

11 (f) court reporters, videographers, and persons preparing
12 transcripts of depositions to whom disclosure is reasonably necessary for this
13 Action;

14 (g) the Court, Court personnel, and jurors or potential jurors; and

15 (h) any other person upon order of the Court or upon stipulation of
16 the producing party, in writing or on the record of a deposition, or at a hearing or
17 trial.

18 10. Counsel desiring to reveal information designated in this Action as
19 “CONFIDENTIAL” to any Retained Experts shall secure from each such person,
20 prior to disclosure of the confidential material, a signed “Acknowledgement and
21 Agreement to Be Bound” (“Acknowledgement”) stating that the person has read
22 this Protective Order, understands its provisions, agrees to be bound thereby, and
23 agrees to be subject to the jurisdiction of this Court for any proceedings relative to
24 enforcement of this Protective Order. The Acknowledgement shall be in the form
25 attached to the Protective Order as Exhibit A. Counsel shall retain all original
26 signed Acknowledgements obtained pursuant to this paragraph and provide a copy
27 to counsel for the designating party by email. If the person to whom disclosure is
28 to be made fails to sign the Acknowledgement despite reasonable attempts by

1 counsel to procure his or her signature, the confidential material shall not be
2 provided to such person. The lack of an executed Acknowledgement shall in no
3 way limit the applicability of the Protective Order to such person.

4 Counsel desiring to reveal information designated in this Action as
5 “CONFIDENTIAL” to any Retained Expert shall also deliver by email to counsel
6 for the designating party, along with a copy of the Acknowledgement signed by the
7 Retained Expert, a written disclosure providing the Retained Expert’s name,
8 current curriculum vitae, and a statement of whether counsel believes in good faith
9 that the Retained Expert currently provides services, as an employee, independent
10 contractor or consultant, to a competitor of the designating party. The designating
11 party shall have 10 court days from its receipt of this limited disclosure to move
12 the Court for a protective order with respect to the provision of confidential
13 material to the Retained Expert. The confidential material shall not be provided to
14 the Retained Expert until (1) the expiration of the 10 court days following the
15 designating party’s receipt of the limited disclosure provided in this paragraph, if
16 no motion for protective order is filed, or (2) if a motion for protective order is
17 timely filed, the Court’s ruling on such motion in accordance with that ruling,
18 unless the Court rules that disclosure to the Retained Expert is prohibited.

19 11. This Protective Order shall remain in full force and effect and shall
20 continue to be binding on all parties and affected persons after the termination of
21 this Action and any appeals, subject to any subsequent modifications by the Court.
22 The parties agree to cooperate in executing any additional documents, making any
23 appearances, or taking any other actions as may be necessary to ensure the
24 effectiveness of this paragraph.

25 12. Whenever confidential material designated in this Action is to be
26 discussed or disclosed in a deposition, the producing party may exclude from the
27 room any person who is not authorized to see or to receive the confidential
28 material pursuant to the terms of paragraph 9 of this Protective Order.

1 13. Any party wishing to designate as confidential deposition testimony
2 or documents submitted as exhibits to a deposition may do so on the record during
3 the deposition, or within thirty (30) days after receipt of the deposition transcript
4 and exhibits by providing written notice of the designation to the parties and any
5 other affected person. When deposition testimony or exhibits are designated as
6 confidential during a deposition, the reporter and/or videographer shall bind and/or
7 label the transcript or video recording in the manner described in paragraph 7 of
8 this Protective Order. Upon being informed within the 30-day period that certain
9 portions of a deposition are to be designated confidential, each party must cause
10 each copy in its custody or control to be so marked immediately. It would not be a
11 violation of this Protective Order if a disclosure of information is made by a party
12 prior to the designation of confidentiality. The parties shall cooperate to the extent
13 reasonable and practical to segregate such confidential material into a separate
14 document or transcript.

15 14. Nothing in this Protective Order shall prohibit a party from disclosing
16 confidential material designated in this Action to any person who was an author,
17 addressee, or recipient of the information or document.

18 15. Unless and until otherwise ordered by the Court or otherwise agreed
19 by the parties, all documents and other discovery material designated
20 “CONFIDENTIAL” shall be treated accordingly under this Protective Order. Any
21 party to this Action may object to the designation of any document or information
22 as “CONFIDENTIAL” by serving a written objection on the designating party and
23 all parties to this Action. If the objecting party and the designating party are
24 unable to resolve the objection in good faith, the objecting party may move the
25 Court for an order with respect to the document or information by initiating
26 preparation of a joint stipulation pursuant to Local Rule 37-2.2. Completion and
27 filing of the joint stipulation and any supplemental memoranda shall be as set forth
28 in Local Rules 37-2.2 and 37-2.3. The document or information shall be treated as

1 “CONFIDENTIAL,” as designated, until the Court rules otherwise. If no such
2 motion is made, said document or information shall keep its classification. In the
3 event of a motion concerning this Protective Order, the Court shall have the
4 discretion to award attorneys’ fees to the party or parties prevailing on the motion.
5 The designating party shall have the burden of proving that the document or
6 information challenged is entitled to the confidentiality designation.

7 16. In the event of any inadvertent disclosure of attorney-client privileged
8 information or information subject to the attorney work product doctrine or any
9 other privilege, the party making such inadvertent disclosure, after learning of such
10 inadvertent disclosure, shall notify the party to whom the inadvertent disclosure
11 was made; the party to whom the inadvertent disclosure was made shall then
12 immediately return such material and all copies the party made thereof. Also, in
13 the event any party hereto receives any document from another party that upon its
14 face is subject to the attorney-client privilege, attorney work product doctrine, or
15 any other privilege, that party shall immediately return such document and all
16 copies the party made thereof to the party who produced the document.

17 17. Nothing in this Protective Order shall be construed as an admission or
18 agreement by any party that any information designated hereunder as
19 “CONFIDENTIAL” by other parties actually constitutes confidential information
20 or proprietary information. The production of confidential material pursuant to
21 this Protective Order shall not be construed as a waiver of objections based on any
22 grounds. Nothing contained in this Protective Order shall preclude any party from
23 objecting and refusing to comply with a production on any grounds or requesting
24 additional protection with respect to documents and other information, including,
25 but not limited to, further restrictions on disclosure, on any grounds.

26 18. The procedures set forth herein shall not relieve a party of the
27 necessity of making timely responses or objections to discovery requests.
28 Notwithstanding anything to the contrary contained herein, all objections as to the

1 form and scope of discovery or to the admissibility of evidence subject to this
2 Protective Order are reserved and are not waived in any respect by any terms of
3 this Protective Order or by production of confidential material designated in this
4 Action. Accordingly, this Protective Order shall not be construed as a waiver of
5 any right to object to the furnishing of documents and/or information in response to
6 discovery based on any ground including, without limitation, that the information
7 sought is privileged, protected from disclosure by third-party or other privacy
8 rights, irrelevant, burdensome or otherwise nondiscoverable or inadmissible at trial
9 or other proceedings in this Action.

10 19. This Protective Order shall not abrogate or diminish any contractual,
11 statutory or other legal obligation or right of any party or person with respect to
12 any proprietary information or trade secrets. The fact that any document or
13 information is disclosed, used, or produced in discovery or at trial herein shall not
14 be admissible evidence in any action or proceeding before any court, agency, or
15 tribunal on the issue of whether or not such document or information is
16 confidential or proprietary.

17 20. At the conclusion of this Action, including any appeals, all
18 confidential material designated in this Action (including, without limitation, any
19 copies, Extracts, or summaries thereof) shall be returned to the producing party
20 within sixty (60) days; provided, however, that counsel shall be entitled to retain
21 pleadings, memoranda, declarations or affidavits, or deposition transcripts that
22 attach, contain, or refer to any confidential material, but only to the extent
23 necessary to preserve a litigation file with respect to this case. The terms of this
24 Protective Order shall survive and continue to be binding on all affected persons
25 after this matter is resolved unless otherwise ordered by a court of competent
26 jurisdiction. Each party's counsel shall provide to the other parties, within sixty
27 (60) days of the conclusion of this Action, a declaration or affidavit attesting to
28 compliance with this paragraph.

1 21. If, prior to a party's return of a producing party's confidential
2 material, the producing party's material becomes the subject of a subpoena,
3 discovery request or demand in any other proceeding of any kind, the party shall
4 notify the producing party whose confidential material is subject to the demand
5 within three (3) business days of receipt of the demand. Notification shall be given
6 by email and mail to the producing party's counsel of record in this case and shall
7 include a copy of the demand. The party to whom the demand is addressed shall
8 not produce any of the producing party's confidential material for fourteen (14)
9 days following receipt of the demand, to permit the producing party adequate
10 opportunity to preserve the continued confidentiality of its confidential material.

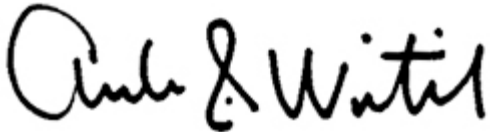
11 10. Nothing in this Protective Order shall limit any producing party's use
12 of its own confidential material or shall prevent any producing party from
13 disclosing its confidential material to any person. Such disclosures shall not affect
14 any confidential designation made pursuant to the terms of this Protective Order so
15 long as the disclosure is made in a manner that is reasonably calculated to maintain
16 the confidentiality of the information.

17 11. Mentor requested, and Ditta refused to agree to, the inclusion of an
18 attorneys'-eyes-only provision in the Protective Order. In the interest of moving
19 forward with the pending production and avoiding a motion over the issue until
20 absolutely necessary, Mentor agreed that this version of the Protective Order need
21 not include such a provision. The parties reserve the right to (1) move the Court to
22 amend or modify this Protective Order at any time, including, without limitation, to
23 include additional provisions for the handling and designation of highly
24 confidential materials as "attorneys' eyes only," and (2) object and refuse to
25 provide information in response to discovery requests seeking information that the
26 responding party contends is highly confidential, until such time as the Court rules
27 on the responding party's motion to amend or modify this Protective Order to
28 include an attorneys'-eyes-only tier of protection, which motion shall be brought

1 by the responding party within 10 court days of service of the responding party's
2 objections on such grounds. This Court shall retain jurisdiction to make such
3 amendments, modifications and additions to this Protective Order as may be
4 agreed to by the parties or as necessary in the interests of justice.

5
6 **IT IS SO ORDERED.**

7
8 12/19/2013
9 DATED: _____



10 _____
11 The Honorable Andrew J. Wistrich
12 United States Magistrate Judge
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EXHIBIT A

AGREEMENT TO BE BOUND BY CONFIDENTIALITY ORDER

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 Re Confidential Information that was issued by the
United States District Court for the Central District of California on
_____ [date] in the case of *Dino Ditta v. Mentor Graphics Corporation*,
Case No. SACV-13-00973CJC (AJWx) (the “Order”). I agree to comply with and
to be bound by all the terms of the Order. I solemnly promise that I will not
disclose in any manner any information or item that is subject to the Order to any
person or entity except in strict compliance with the provisions of the 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 the Order,
even if such enforcement proceedings occur after termination of this action.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____