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6 Attorneys for Defendants  
 ROSS SYSTEMS, INC.; CDC SOFTWARE  
 7 CORPORATION; and CDC SOFTWARE, INC.

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **EASTERN DISTRICT OF CALIFORNIA**

11  
 12 CALIFORNIA VALLEY LAND  
 COMPANY dba WOOLF ENTERPRISES,  
 13 and HARRIS WOOLF ALMONDS,  
 14  
 Plaintiff,  
 15  
 v.  
 16 ROSS SYSTEMS, INC; CDC  
 SOFTWARE, INC.; CDC SOFTWARE  
 17 CORPORATION; and DOES 1 through  
 100, inclusive,  
 18  
 Defendants.  
 19

No. 1:11-cv-01362-AWI-SMS

**STIPULATED PROTECTIVE ORDER**

20  
 21 **1. PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve production of  
 23 confidential, proprietary, or private information for which special protection from public  
 24 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 25 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 26 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 27 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 28 and use extends only to the limited information or items that are entitled to confidential treatment



1 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
2 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and  
4 the standards that will be applied when a party seeks permission from the court to file material  
5 under seal.

6 **2. DEFINITIONS**

7 2.1. Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is  
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
11 of Civil Procedure 26(c).

12 2.3. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
13 well as their support staff).

14 2.4. Designated House Counsel: House Counsel who seek access to “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

16 2.5. Designating Party: a Party or Non-Party that designates information or items that  
17 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE.”

20 2.6. Disclosure or Discovery Material: all items or information, regardless of the  
21 medium or manner in which it is generated, stored, or maintained (including, among other things,  
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
23 responses to discovery in this matter.

24 2.7. Expert: a person with specialized knowledge or experience in a matter pertinent to  
25 the litigation who: (1) has been retained by a Party or its counsel to serve as an expert witness or  
26 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
27 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
28 or of a Party’s competitor.

1           2.8. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
2 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
3 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
4 less restrictive means.

5           2.9. “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
6 extremely sensitive “Confidential Information or Items” representing computer code and  
7 associated comments and revision histories, formulas, engineering specifications, or schematics  
8 that define or otherwise describe in detail the algorithms or structure of software or hardware  
9 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
10 serious harm that could not be avoided by less restrictive means.

11           2.10. House Counsel: attorneys who are employees of a party to this action. House  
12 Counsel does not include Outside Counsel of Record or any other outside counsel, with the  
13 exception that specific outside counsel shall be considered House Counsel if a Party has no in-  
14 house counsel and instead generally uses that specific outside counsel for corporate and/or  
15 business matters that would usually be handled by in-house counsel.

16           2.11. Non-Party: any natural person, partnership, corporation, association, or other legal  
17 entity not named as a Party to this action.

18           2.12. Outside Counsel of Record: attorneys who are not employees of a party to this  
19 action but are retained to represent or advise a party to this action and have appeared in this action  
20 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

21           2.13. Party: any party to this action, including all of its officers, directors, employees,  
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23           2.14. Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
24 Material in this action.

25           2.15. Professional Vendors: persons or entities that provide litigation support services  
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
27 organizing, storing, or retrieving data in any form or medium) and their employees and  
28 subcontractors.

1           2.16. Protected Material: any Disclosure or Discovery Material that is designated as  
2 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as  
3 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4           2.17. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
5 Producing Party.

6 **3. SCOPE**

7           The protections conferred by this Stipulation and Order cover not only Protected Material  
8 (as defined above), but also: (1) any information copied or extracted from Protected Material; (2)  
9 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
11 Any use of Protected Material at trial shall be governed by a separate agreement or order.

12 **4. DURATION**

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

20 **5. DESIGNATING PROTECTED MATERIAL**

21           5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party  
22 or Non-Party that designates information or items for protection under this Order must take care  
23 to limit any such designation to specific material that qualifies under the appropriate standards.  
24 To the extent it is practical to do so, the Designating Party must designate for protection only  
25 those parts of material, documents, items, or oral or written communications that qualify – so that  
26 other portions of the material, documents, items, or communications for which protection is not  
27 warranted are not swept unjustifiably within the ambit of this Order.

28

1                   5.1.1. Mass, indiscriminate, or routinized designations are prohibited.  
2 Designations that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber or retard the case development process or to impose  
4 unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

5                   5.1.2. If it comes to a Designating Party’s attention that information or items that  
6 it designated for protection do not qualify for protection at all or do not qualify for the level of  
7 protection initially asserted, that Designating Party must promptly notify all other parties that it is  
8 withdrawing the mistaken designation.

9                   5.2. Manner and Timing of Designations. Except as otherwise provided in this Order,  
10 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
11 protection under this Order must be clearly so designated before the material is disclosed or  
12 produced. Designation in conformity with this Order requires:

13                   (a) for information in documentary form (e.g., paper or electronic documents, but  
14 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
15 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
16 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
17 protected material. If only a portion or portions of the material on a page qualifies for protection,  
18 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
19 appropriate markings in the margins) and must specify, for each portion, the level of protection  
20 being asserted.

21                   A Party or Non-Party that makes original documents or materials available for inspection  
22 need not designate them for protection until after the inspecting Party has indicated which  
23 material it would like copied and produced. During the inspection and before the designation, all  
24 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
26 copied and produced, the Producing Party must determine which documents, or portions thereof,  
27 qualify for protection under this Order. Then, before producing the specified documents, the  
28 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY



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

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
7 Designating Party identify on the record, before the close of the deposition, hearing, or other  
8 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
9 impractical to identify separately each portion of testimony that is entitled to protection and it  
10 appears that substantial portions of the testimony may qualify for protection, the Designating  
11 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
12 a right to have up to 21 days to identify the specific portions of the testimony as to which  
13 protection is sought and to specify the level of protection being asserted. Only those portions of  
14 the testimony that are appropriately designated for protection within the 21 days shall be covered  
15 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
16 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
17 entire transcript shall be treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

19 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
20 other proceeding to include Protected Material so that the other parties can ensure that only  
21 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
22 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
23 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 Transcripts containing Protected Material shall have an obvious legend on the title page  
26 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
27 pages (including line numbers as appropriate) that have been designated as Protected Material and  
28 the level of protection being asserted by the Designating Party. The Designating Party shall

1 inform the court reporter of these requirements. Any transcript that is prepared before the  
2 expiration of a 21-day period for designation shall be treated during that period as if it had been  
3 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
4 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
5 actually designated.

6 (c) for information produced in some form other than documentary and for any other  
7 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
8 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” OR “HIGHLY  
10 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item  
11 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
12 portion(s) and specify the level of protection being asserted.

13 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
14 designate qualified information or items does not, standing alone, waive the Designating Party’s  
15 right to secure protection under this Order for such material. Upon timely correction of a  
16 designation, the Receiving Party must make reasonable efforts to assure that the material is  
17 treated in accordance with the provisions of this Order.

## 18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of  
20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
24 original designation is disclosed.

25 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution  
26 process by providing written notice of each designation it is challenging and describing the basis  
27 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
28 notice must recite that the challenge to confidentiality is being made in accordance with this

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

11 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court  
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
13 Civil Local Rule 141.1 (and in compliance with Civil Local Rule 141, if applicable) within 21  
14 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
15 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
16 accompanied by a competent declaration affirming that the movant has complied with the meet  
17 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
18 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
19 shall automatically waive the confidentiality designation for each challenged designation. In  
20 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
21 time if there is good cause for doing so, including a challenge to the designation of a deposition  
22 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
23 accompanied by a competent declaration affirming that the movant has complied with the meet  
24 and confer requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating  
26 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
27 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
28 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to



1 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
2 material in question the level of protection to which it is entitled under the Producing Party's  
3 designation until the court rules on the challenge.

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

5 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed  
6 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
8 to the categories of persons and under the conditions described in this Order. When the litigation  
9 has been terminated, a Receiving Party must comply with the provisions of section 14 below  
10 (FINAL DISPOSITION).

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

14 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
16 disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
19 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
20 Bound" that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
22 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
25 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
26 Agreement to Be Bound" (Exhibit A);

27 (d) the court and its personnel;

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

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

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

12 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
13 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
15 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
16 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
19 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
20 Bound” that is attached hereto as Exhibit A;

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

25 (c) the court and its personnel;

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

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

3 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
5 CODE” Information or Items to Designated House Counsel or Experts.

6 (a)(1) Designated House Counsel: Unless otherwise ordered by the court or agreed to in  
7 writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any  
8 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” must make a written request to the Designating Party that: (1) sets forth the full  
10 name of the Designated House Counsel and the city and state of his or her residence, and (2)  
11 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
12 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
13 become involved, in any competitive decision-making. Any Designated House Counsel who  
14 receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to  
15 this Order shall disclose, within 14 days of occurrence, any relevant changes in job duties or  
16 responsibilities that occur prior to final disposition of the litigation to allow the Designating Party  
17 to evaluate any later-arising competitive decision-making responsibilities.

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

1 including 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 litigation in the  
3 agricultural commodities or grocery context in connection with which the Expert has offered  
4 expert testimony, including through a declaration, report, or testimony at a deposition or trial,  
5 during the preceding 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 identified  
8 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
9 receives a written objection from the Designating Party. Any such objection must set forth in  
10 detail 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 Party  
14 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion  
15 seeking permission from the court to do so. Any such motion must describe the circumstances  
16 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or  
17 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
18 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
19 must 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) and  
21 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
22 disclosure.

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

27 **8. SOURCE CODE**

28 (a) To the extent production of source code becomes necessary in this case, a

1 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
2 if it comprises or includes confidential, proprietary, or trade secret source code.

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

9 (c) Any source code produced in discovery shall be made available for inspection, in a  
10 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
11 other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually  
12 agreed upon location. The source code shall be made available for inspection on a secured  
13 computer in a secured room without Internet access or network access to other computers, and the  
14 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto  
15 any recordable media or recordable device. The Producing Party may visually monitor the  
16 activities of the Receiving Party’s representatives during any source code review, but only to  
17 ensure that there is no unauthorized recording, copying, or transmission of the source code.

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

28

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

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

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

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

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

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

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

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

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

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

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

17 (1) promptly notify in writing the Requesting Party and the Non-Party that  
18 some or all of the information requested is subject to a confidentiality agreement with a Non-  
19 Party;

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

23 (3) make the information requested available for inspection by the Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
25 days of receiving the notice and accompanying information, the Receiving Party may produce the  
26 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
27 seeks a protective order, the Receiving Party shall not produce any information in its possession  
28 or control that is subject to the confidentiality agreement with the Non-Party before a

1 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
2 burden and expense of seeking protection in this court of its Protected Material.

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

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

11 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
12 **PROTECTED MATERIAL**

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

22 **13. MISCELLANEOUS**

23 13.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
24 seek its modification by the court in the future.

25 13.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
26 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
28



1 no Party waives any right to object on any ground to use in evidence of any of the material  
2 covered by this Protective Order.

3 13.3. Filing Protected Material. Without written permission from the Designating Party  
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
5 the public record in this action any Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed  
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
8 issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request  
9 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
10 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
11 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving  
12 Party may file the Protected Material in the public record unless otherwise instructed by the court.

13 **14. FINAL DISPOSITION**

14 14.1. Unless otherwise ordered or agreed in writing by the Producing Party, within 60  
15 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party  
16 must return all Protected Material to the Producing Party or destroy such material. As used in this  
17 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and  
18 any other format reproducing or capturing any of the Protected Material. Whether the Protected  
19 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
20 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
21 deadline 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 the  
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
25 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
26 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
27 consultant and expert work product, even if such materials contain Protected Material. Any such  
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**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 Northern District of  
California in the case of California Valley Land Company dba Woolf Enterprises, et al. v. Ross  
Systems, Inc., et al, Case No. No. 1:11-cv-01362-AWI-SMS. 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  
Northern 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.

DATE: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_