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 13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 DISH NETWORK L.L.C., ECHOSTAR
 TECHNOLOGIES L.L.C., and NAGRASTAR
 16 L.L.C.,

17 Plaintiffs,

18 v.

19 INTELLIGENT TECHNOLOGY, INC., and
 20 BYONG YONG KIM,

21 Defendants.

Case No. 2:09-CV-3436-WBS-KJM

**STIPULATED PROTECTIVE
 ORDER**

(With Court Modifications Shown In
 Strikeout/Underline Format)

22
 23 The Court recognizes that at least some of the documents and information (“materials”)
 24 being sought through discovery in the above-captioned action are, for competitive reasons,
 25 normally kept confidential by the parties. The parties have agreed to be bound by the terms of
 26 this Protective Order (“Order”) in this action.
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1 The materials to be exchanged throughout the course of the litigation between the parties
2 may contain trade secret or other confidential research, technical, cost, price, marketing or other
3 commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The
4 purpose of this Order is to protect the confidentiality of such materials as much as practical
5 during the discovery period in this litigation. THEREFORE:

6 DEFINITIONS

7 1. The term “Confidential Information” shall mean and include information
8 contained or disclosed in any materials, including documents, portions of documents, answers to
9 interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and
10 transcripts of trial testimony and depositions, including data, summaries, and compilations
11 derived therefrom that is deemed to be Confidential Information by any party to which it belongs.

12 2. The term “materials” shall include, but shall not be limited to: documents;
13 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material
14 that identify customers or potential customers; price lists or schedules or other matter identifying
15 pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts;
16 books of account; worksheets; notes of conversations; desk diaries; appointment books; expense
17 accounts; recordings; photographs; motion pictures; compilations from which information can be
18 obtained and translated into reasonably usable form through detection devices; sketches;
19 drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures;
20 other writings; email; computer records; other electronically stored information; models and
21 prototypes and other physical objects.

22 3. The term “counsel” shall mean outside counsel of record, and other attorneys,
23 paralegals, secretaries, and other support staff employed in the law firms identified below:

24 **A. For Plaintiffs**

25 (1) HAGAN NOLL & BOYLE LLC

26 (2) LAW OFFICE OF DAVID BARRETT

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1 **B. For Defendants**

2 (1) LAW OFFICE OF IAN KELLEY

3 GENERAL RULES

4 4. Each party to this litigation that produces or discloses any materials, answers to
5 interrogatories, responses to requests for admission, trial testimony, deposition testimony, and
6 transcripts of trial testimony and depositions, or information that the producing party believes
7 should be subject to this Protective Order may designate the same as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 a. Designation as “CONFIDENTIAL”: Any party may designate information
10 as “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the
11 unrestricted disclosure of such information could be potentially prejudicial to the business
12 or operations of such party.

13 b. Designation as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY”: Any party may designate information as “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” only if, in the good faith belief of such party and its
16 counsel, the information is among that considered to be most sensitive by the party,
17 including but not limited to trade secret or other confidential research, development,
18 financial or other commercial information.

19 5. In the event the producing party elects to produce materials for inspection, no
20 marking need be made by the producing party in advance of the initial inspection. For purposes of
21 the initial inspection, all materials produced shall be considered as “HIGHLY CONFIDENTIAL
22 – ATTORNEYS’ EYES ONLY” and shall be treated as such pursuant to the terms of this Order.
23 Thereafter, upon selection of specified materials for copying by the inspecting party, the
24 producing party shall, within a reasonable time prior to producing those materials to the
25 inspecting party, mark the copies of those materials that contain Confidential Information with
26 the appropriate confidentiality marking.

27 6. Whenever a deposition taken on behalf of any party involves a disclosure of
28 Confidential Information of any party:

1 a. said deposition or portions thereof shall be designated as containing
2 Confidential Information subject to the provisions of this Order; such designation shall be
3 made on the record whenever possible, but a party may designate portions of depositions
4 as containing Confidential Information after transcription of the proceedings; a party shall
5 have until fifteen (15) days after receipt of the deposition transcript to inform the other
6 party or parties to the action of the portions of the transcript designated
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY;”

8 b. the disclosing party shall have the right to exclude from attendance at said
9 deposition, during such time as the Confidential Information is to be disclosed, any person
10 other than the deponent, counsel (including their staff and associates), the court reporter,
11 and the person(s) agreed upon pursuant to paragraph 8 below; and

12 c. the originals of said deposition transcripts and all copies thereof shall bear
13 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY,” as appropriate, and the original or any copy ultimately presented to a court for
15 filing, unless otherwise ordered by the Court, shall not be filed unless it can be
16 accomplished under seal, identified as being subject to this Order, and protected from
17 being opened except by order of this Court. The party seeking to file such material shall
18 first seek permission of the Court to file said material under seal.

19 7. All Confidential Information designated as “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall not be disclosed by the receiving party
21 to anyone other than the Court as necessary, or those persons designated herein and shall be
22 handled in the manner set forth below and, in any event, shall not be used for any purpose other
23 than in connection with this litigation, unless and until such designation is removed either by
24 agreement of the parties, or by order of the Court.

25 8. Information designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY” shall be viewed only by counsel (as defined in paragraph 3) of the receiving party, and
27 by independent experts under the conditions set forth in this Paragraph. The right of any
28 independent expert to receive any Confidential Information shall be subject to the advance

1 approval of such expert by the producing party or by permission of the Court. The party seeking
2 approval of an independent expert shall provide the producing party with the name and
3 curriculum vitae of the proposed independent expert, and an executed copy of the form attached
4 hereto as Exhibit A, in advance of providing any Confidential Information of the producing party
5 to the expert. Any objection by the producing party to an independent expert receiving
6 Confidential Information must be made in writing within fourteen (14) days following receipt of
7 the identification of the proposed expert. Confidential Information may be disclosed to an
8 independent expert if the fourteen (14) day period has passed and no objection has been made.
9 The approval of independent experts shall not be unreasonably withheld.

10 9. Information designated “CONFIDENTIAL” shall be viewed only by the Court if
11 necessary, counsel (as defined in paragraph 3) of the receiving party, by independent experts
12 (pursuant to the terms of paragraph 8), and by the additional individuals listed below, provided
13 each such individual has read this Order in advance of disclosure and has executed a copy of the
14 form attached hereto as Exhibit A:

15 a. Executives, Directors or In-House Counsel who are required to participate
16 in policy decisions with reference to this action;

17 b. Technical personnel of the parties with whom Counsel for the parties find
18 it necessary to consult, in the discretion of such counsel, in preparation for trial of this
19 action; and

20 c. Stenographic and clerical employees associated with the individuals
21 identified above;

22 d. During their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary.

24 10. With respect to material designated “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” any person indicated on the face of the
26 document to be its originator, author or a recipient of a copy thereof, may be shown the same, in
27 addition to the Court if necessary.

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1 11. All information which has been designated as “CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by the producing or disclosing party, and any
3 and all reproductions thereof, shall be retained in the custody of the counsel for the receiving
4 party identified in paragraph 3, except that independent experts authorized to view such
5 information under the terms of this Order may retain custody of copies such as are necessary for
6 their participation in this litigation.

7 12. Before any materials produced in discovery, answers to interrogatories, responses
8 to requests for admissions, deposition transcripts, or other documents which are designated as
9 Confidential Information are filed with the Court for any purpose, the party seeking to file such
10 material shall seek permission of the Court to file said material under seal.

11 13. At any stage of these proceedings, any party may object to a designation of the
12 materials as Confidential Information. The party objecting to confidentiality shall notify, in
13 writing, counsel for the designating party of the objected-to materials and the grounds for the
14 objection. If the dispute is not resolved consensually between the parties within seven (7)
15 business days of receipt of such a notice of objections, the objecting party may move the Court
16 for a ruling on the objection. The materials at issue shall be treated as Confidential Information,
17 as designated by the designating party, until the Court has ruled on the objection or the matter has
18 been otherwise resolved.

19 14. All Confidential Information shall be held in confidence by those inspecting or
20 receiving it, and shall be used only for purposes of this action. Counsel for each party, and each
21 person receiving Confidential Information shall take reasonable precautions to prevent the
22 unauthorized or inadvertent disclosure of such information. If Confidential Information is
23 disclosed to any person other than a person authorized by this Order, the party responsible for the
24 unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized
25 disclosure to the attention of the other parties and, without prejudice to any rights and remedies of
26 the other parties, make every effort to prevent further disclosure by the party and by the person(s)
27 receiving the unauthorized disclosure.
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1 15. No party shall be responsible to another party for disclosure of Confidential
2 Information under this Order if the information in question is not labeled or otherwise identified
3 as such in accordance with this Order.

4 16. If a party, through inadvertence, produces any Confidential Information without
5 labeling or marking or otherwise designating it as such in accordance with this Order, the
6 designating party may give written notice to the receiving party that the document or thing
7 produced is deemed Confidential Information, and that the document or thing produced should be
8 treated as such in accordance with that designation under this Order. The receiving party must
9 treat the materials as confidential, once the designating party so notifies the receiving party. If the
10 receiving party has disclosed the materials before receiving the designation, the receiving party
11 must notify the designating party in writing of each such disclosure. Counsel for the parties shall
12 agree on a mutually acceptable manner of labeling or marking the inadvertently produced
13 materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” - SUBJECT TO PROTECTIVE ORDER.

15 17. Nothing herein shall prejudice the right of any party to object to the production of
16 any discovery material on the grounds that the material is protected as privileged or as attorney
17 work product.

18 18. Nothing in this Order shall bar counsel from rendering advice to their clients with
19 respect to this litigation and, in the course thereof, relying upon any information designated as
20 Confidential Information, provided that the contents of the information shall not be disclosed.

21 19. This Order shall be without prejudice to the right of any party to oppose
22 production of any information for lack of relevance or any other ground other than the mere
23 presence of Confidential Information. The existence of this Order shall not be used by either party
24 as a basis for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

25 20. Nothing herein shall be construed to prevent disclosure of Confidential
26 Information if such disclosure is required by law or by order of the Court.

27 21. Upon final termination of this action, including any and all appeals, counsel for
28 each party shall, upon request of the producing party, return all Confidential Information to the

1 party that produced the information, including any copies, excerpts, and summaries thereof, or
2 shall destroy same at the option of the receiving party, and shall purge all such information from
3 all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each
4 party may retain all pleadings, briefs, memoranda, motions, and other documents filed with the
5 Court that refer to or incorporate Confidential Information, and will continue to be bound by this
6 Order with respect to all such retained information. Further, attorney work product materials that
7 contain Confidential Information need not be destroyed, but, if they are not destroyed, the person
8 in possession of the attorney work product will continue to be bound by this Order with respect to
9 all such retained information.

10 22. Unless otherwise ordered by the Court, the restrictions and obligations set forth
11 herein shall not apply to any information that: (a) the parties agree should not be designated
12 Confidential Information; (b) the parties agree, or the Court rules, is already public knowledge;
13 (c) the parties agree, or the Court rules, has become public knowledge other than as a result of
14 disclosure by the receiving party, its employees, or its agents in violation of this Order; or (d) has
15 come or shall come into the receiving party's legitimate knowledge independently of the
16 production by the designating party. Prior knowledge must be established by pre-production
17 documentation, unless otherwise ordered by the Court.

18 23. The restrictions and obligations herein shall not be deemed to prohibit discussions
19 of any Confidential Information with anyone if that person already has or obtains legitimate
20 possession thereof.

21 24. Transmission by email to the addresses set forth below is acceptable for all
22 notification purposes herein:

23 **A. To Plaintiffs' Counsel**

24 (1) chad.hagan@hnbllc.com

25 (2) stephen.ferguson@hnbllc.com

26 **B. To Defendants' Counsel**

27 (1) ikelley@sflaw.net

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1 25. This Order may be modified by agreement of the parties, subject to approval by
2 the Court.

3 26. The Court may modify the terms and conditions of this Order for good cause, or in
4 the interest of justice, or on its own order at any time in these proceedings. The parties prefer that
5 the Court provide them with notice of the Court's intent to modify the Order and the content of
6 those modifications, prior to entry of such an order.

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IT IS SO STIPULATED THROUGH COUNSEL OF RECORD

Dated: February 12, 2010

HAGAN NOLL & BOYLE LLC

By: _____ /s/

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Attorneys for Plaintiffs

Dated: February 12, 2010

LAW OFFICE OF IAN KELLEY

By: _____ /s/

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Facsimile: (415) 581-0887

Attorneys for Defendants

IT IS SO ORDERED this 19th day of February 2010



U.S. MAGISTRATE JUDGE

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DISH NETWORK L.L.C., ECHOSTAR
TECHNOLOGIES L.L.C., and NAGRASTAR
L.L.C.,

Plaintiffs,

v.

INTELLIGENT TECHNOLOGY, INC., and
BYONG YONG KIM,

Defendants.

Case No. 2:09-CV-03436-WBS-KJM

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Protective Order entered in *DISH Network L.L.C. et al. v.*

Intelligent Technology, Inc. et al., Case No. 2:09-CV-03436-WBS-KJM, and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the ~~Southern~~ Eastern District of California with respect to enforcement of the Protective Order.

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6. I understand that any disclosure or use of “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____
